Nos. 15252-54

United States
Court of Appeals
for the Ninth Circuit

No. 15252

MATANUSKA VALLEY LINES, INC., a Corporation, Appellant,

vs.

DOROTHY NEAL and NATHANIEL NEAL, JR., Appellees.

No. 15253

MATANUSKA VALLEY LINES, INC., a Corporation, Appellant,

vs.

BLANCHE THOMAS, Appellee.

No. 15254

MATANUSKA VALLEY LINES, INC., a Corporation, Appellant,

vs.

WORDIE FRAZIER and PRINCE FRAZIER, Appellees.

Transcript of Record

Appeals from the District Court for the District of Alaska, Third Division

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—1-8-57

Nos. 15252-54

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

HELLENTHAL & COTTIS,
Reed Building,
Anchorage, Alaska,

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1026 White-Stuart-Henry Building,
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DAVIS, RENFREW & HUGHES,
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Attorneys for Appellants.

KAY & BUCKALEW,
Masonic Building,
Anchorage, Alaska,

STRINGER & CONNOLLY,
Central Building,
Anchorage, Alaska,

Attorneys for Appellees.

States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 24th day of October, in the year of our Lord, one thousand nine hundred and fifty-five, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the appeal in this cause be, and hereby is, dismissed. (December 13, 1955.)

You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the sixteenth day of January in the year of our Lord one thousand nine hundred and fifty-six.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk, United States Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed in District Court for the Territory of Alaska, Third Division, March 16, 1956.

In the District Court for the District of Alaska,
Third Division

No. A-8214

DOROTHY NEAL and NATHANIEL NEAL, JR., Plaintiffs,

vs.

MATANUSKA VALLEY LINES, INC., a corporation, and JOHN DOE WILLIAMS and LOIS WILLIAMS, Defendants.

MOTION FOR ISSUANCE OF CERTIFICATE AND ORDER

Comes Now the plaintiffs in the above entitled cause and move this Honorable Court for an Order and Certificate to be entered, nunc pro tunc, directing the entry of final judgment upon verdicts I, II, III, IV and V, received and filed in the above entitled cause on September 24, 1953, and expressly determining that there is no just reason for delay.

This motion is made and based upon Rule 54(b) and Rule 63, Federal Rules of Civil Procedure, and upon all the records, papers and files in this cause.

/s/ WENDELL P. KAY,
Of Attorneys for Plaintiffs

Acknowledgment of Service attached.

[Endorsed]: Filed November 2, 1955.

[Title of Court and Causes A-8214, A-8413, A-8666]

MOTION

Comes now Davis, Renfrew & Hughes and moves the Court for an order substituting their name for Evander Smith, one of the former counsel of Matanuska Valley Lines, Inc., who has now left the Territory of Alaska and is no longer engaged in active practice in the Territory.

/s/ WILLIAM W. RENFREW,
of Davis, Renfrew & Hughes

ORDER

The above motion coming on regularly for hearing, and the Court being fully advised in the premises, now therefore

It Is Hereby Ordered that Davis, Renfrew and Hughes shall be and they are hereby entered as co-counsel for Matanuska Valley Lines, Inc., in the above entitled cause and are herewith substituted for former counsel, Evander Smith, who is no longer engaged in active practice in the Territory of Alaska.

Dated this 3rd day of January, 1955.

/s/ J. L. McCARREY, JR.,
District Judge

Entered January 3, 1956.

Acknowledgment of Service attached.

[Endorsed]: Filed January 3, 1956.

[Title of District Court and Cause No. A-8214.]

MOTION TO SET ASIDE VERDICT OR IN THE ALTERNATIVE MOTION FOR A NEW TRIAL

I.

The defendant, Matanuska Valley Lines, Inc., in the above action, by its counsel, moves the court in accordance with Rule 50 of the Rules of Civil Procedure, that verdicts No. 1 and 2 be set aside and that it have judgment entered in accordance with its motion for directed verdicts which were made at the close of all the evidence herein.

II.

That said defendant in the alternative moves the court that the said verdicts be set aside and a new trial granted.

III.

The grounds for this motion are as follows:

1. Refusal of the trial court to comply with Rule 54 B, Federal Rules of Civil Procedure, which prevented the defendant from completing its appeal and getting a decision on the merits from the circuit court.

2. Failure of the jury to return a verdict on the cross-complaint (Verdicts No. 6 and 7), which fact requires a new trial in all cases consolidated at the trial of this cause so that one record or one appeal can be undertaken on the entire matter.

3. The absence of evidence sufficient to support the verdicts.

4. The verdicts are contrary to the clear weight of the evidence.

5. Irregularity in the proceedings by which the defendants were prevented from having a fair trial in that the defendants were denied more than a total of three peremptory challenges for all three defendants and in that the trial was conducted in an atmosphere of haste.

6. The damages awarded are excessive and appear to have been given under the influence of passion or prejudice.

7. Various errors of law occurred at the trial and were excepted to, such errors including the admission in evidence of Dr. Starr's deposition without any showing that the deponent was not available for the trial; instructions 6, 8, 14, 15, 17, 18 and the forms of verdict 1 and 2.

8. Cause A-8413 consolidated herewith was forced to trial before it was at issue and arguments over the matter in court may have influenced the jury by leading it to believe that the defendants were reluctant to have the causes come to trial.

9. Trial of the cases was compelled although none of them was at issue with respect to the cross-complaint of Matanuska Valley Lines, Inc., against the other defendants.

These motions are predicated upon the records, files, proceedings and evidence herein.

This motion supplements that dated October 5,

1953, and in no manner waives the relief sought by said former motion or the grounds set forth for such relief.

Dated at Anchorage, Alaska, this 6th day of January, 1956.

MATANUSKA VALLEY LINES, INC.,
By HELLENTHAL, HELLENTHAL & COTTIS,
/s/ By RALPH H. COTTIS,
Attorneys for Defendant
DAVIS, RENFREW & HUGHES,
/s/ By WILLIAM W. RENFREW
Attorneys for Defendant

Acknowledgment of Service attached.
[Endorsed]: Filed January 6, 1956.

[Title of District Court and Cause No. A-8214.]

MOTION TO DISCHARGE BOND AND EXONERATE BOND SURETY

Comes now the defendant, Matanuska Valley Lines, Inc., by and through their attorneys of record, and hereby moves the court for an order discharging the cost bond and supersedeas bond heretofore filed in this cause, and for a further order exonerating the sureties from all liability thereon. This motion is based upon the following:

1. There was no judgment to supersede.
2. That the opinion of the United States Court

of Appeals for the Ninth Circuit filed December 13, 1955, does not require payment of costs.

Dated this 6th day of January, 1956.

MATANUSKA VALLEY LINES, INC.,
HELLENTHAL, HELLENTHAL & COTTIS,
/s/ By RALPH H. COTTIS
Attorneys for Defendant

DAVIS, RENFREW & HUGHES,
/s/ By WILLIAM W. RENFREW,
Attorneys for Defendant

Acknowledgment of Service attached.
[Endorsed]: Filed January 6, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

MOTION FOR JUDGMENT ON SUPERSEDEAS BOND

Motion

Comes Now the plaintiffs, by and through John R. Connolly and Wendell P. Kay, their attorneys, and move the Court to enter judgment against E. H. Oling, Joe Blackard, Russell Swank, Lewis E. Simpson, Louis Odsather, Norman G. Lange, J. A. Columbus, M. W. Clark, Loran E. Camon, Lena Denison, John T. Campbell, Fred J. Snyder, H. M. Baker, M. B. Kirkpatrick, John H. Clawson, Frank M. Reed, J. C. Morris, Robert N. Kessler and E. D. Hillstrand, and in favor of these plaintiffs for the

total sum of $80,000.00, and against each of them in the amount in which the said E. H. Oling, Joe Blackard, Russell Swank, Lewis E. Simpson, Louis Odsather, Norman G. Lange, J. A. Columbus, M. W. Clark, Loran E. Camon, Lena Denison, John T. Campbell, Fred J. Snyder, H. M. Baker, M. B. Kirkpatrick, John H. Clawson, Frank M. Reed, J. C. Morris, Robert M. Kessler and E. D. Hillstrand, respectively, became liable upon that certain supersedeas bond dated the 9th day of April, 1954, and filed in the above entitled cause on the said 9th day of April, 1954.

This motion is based upon the ground that the appeal in the above entitled cause taken by the defendant, Matanuska Valley Lines, Inc., has now been dismissed by the Court of Appeals for the Ninth Circuit, and upon all the pleadings, papers, records and files in this action.

Dated this 16th day of April, 1956.

/s/ WENDELL P. KAY,
Of Attorneys for Plaintiffs

Receipt of copy acknowledged.
[Endorsed]: Filed April 30, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666.]

M. O. RENDERING ORAL DECISION

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr.,

District Judge, the following proceedings were had, to-wit:

Now at this time motions having been submitted on briefs in cause No. A-8214, entitled Dorothy Neal and Nathaniel Neal Jr., Plaintiffs, versus Matanuska Valley Lines, Inc., a corporation, John Doe Williams and Lois Williams, Defendants; cause No. A-8413, entitled Blanche Thomas, Plaintiff, versus Matanuska Valley Lines, Inc., a corporation, and John Doe Williams and Lois Williams, Defendants; and cause No. A-8666, entitled Wordie Frazier and Prince Frazier, Plaintiffs, versus Matanuska Valley Lines, Inc., a corporation, Milton T. Williams and Lois Williams, Defendants,

Whereupon, Court now denies motion for judgment on bond; denies motion exonerating sureties on the bond; denies motion for new trial; grants motion to enter judgment under Rule 54 (b).

Entered May 21, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

ORDER AND CERTIFICATE

The plaintiffs having heretofore filed in the above entitled Court and matter their motion for an order and certificate directing the entry of final judgment and determining that there is no just reason for delay under the provisions of Rule 54(b), Federal Rules of Civil Procedure, and the same having

regularly come on for hearing before the Court on the 2nd day of November, 1955, Wendell P. Kay appearing as attorney for the plaintiffs, and Ralph H. Cottis as attorney for the defendant, Matanuska Valley Lines, Inc., and said motion having been argued by respective counsel, and it sufficiently appearing from all of the records, papers and files in this cause that final judgment should be entered upon Verdicts I, II, III, IV and V, received and filed on September 24, 1953, despite the failure of the jury to return a verdict on the cross-complaint of the defendant, Matanuska Valley Lines, Inc., against its co-defendant, and the Court being satisfied that there is no just reason for delay in the entry of said final judgment;

It is Ordered, Adjudged and Decreed that there is no just reason for delay in the entry of final judgment upon the verdicts returned by the jury and received and filed on September 24, 1953, and it is expressly Ordered that such final judgment be entered.

Dated this 21st day of May, 1956.

/s/ J. L. McCARREY, JR.,
Judge of the District Court

Hearing requested with respect to foregoing.—12/27/55. Signed R. H. Cottis.

Entered May 21, 1956.

Acknowledgment of Service attached.

[Endorsed]: Filed May 21, 1956.

In the District Court for the District of Alaska, Third Division

No. A-8214

Dorothy Neal and Nathaniel Neal, Jr. Plaintiffs, vs. Matanuska Valley Lines, Inc., a corporation, and John Doe Williams and Lois Williams, Defendants.

No. A-8413

Blanche Thomas, Plaintiff, vs. Matanuska Valley Lines, Inc., a corporation, and John Doe Williams and Lois Williams, Defendants.

No. A-8666

Wordie Frazier and Prince Frazier, Plaintiffs, vs. Matanuska Valley Lines, Inc., a corporation, and John Doe Williams and Lois Williams, Defendants.

FINAL JUDGMENT

These Actions, first having been consolidated, having been regularly placed upon the calendar for trial, and having been reached for trial on the 15th day of September, 1953, the above named plaintiffs appearing by their attorneys, Wendell P. Kay, Herald Stringer, John Connolly, and J. Earl Cooper, and the above named defendant, Matanuska Valley Lines, Inc., appearing by its attorneys, Ralph Cottis and Evander C. Smith, and the above named defendants, John Doe Williams, properly known as Milton T. Williams, and Lois Williams, appearing by their attorneys, Raymond E. Plummer and Bur-

ton Biss, a jury of twelve persons was regularly impanelled to try said actions and witnesses on the part of the plaintiffs and the defendants were sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the Court, the jury retired to consider their verdict and subsequently returned into Court on the 24th day of September, 1953, and returned into open Court the following numbered verdicts, to-wit:

Verdict No. I.

We, the Jury, duly impanelled and sworn to try the above entitled cause, find as follows:

For the Plaintiff, Dorothy Neal, against both defendants in the sum of $75,000.00.

Dated at Anchorage, Alaska, this 24th day of Sept., 1953.

A. L. Engebreth, Foreman

Verdict No. II.

We, the Jury, duly impanelled and sworn to try the above entitled cause, find as follows:

For the Plaintiff, Nathaniel Neal, Jr., against both defendants in the sum of $17,500.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. Engebreth, Foreman

Verdict No. III.

We, the Jury, duly impanelled and sworn to try the above entitled cause, find as follows:

For the Plaintiff, Wordie Frazier, against both defendants in the sum of $5,000.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. Engebreth, Foreman

Verdict No. IV.

We, the Jury, duly impanelled and sworn to try the above entitled cause, find as follows:

For the Plaintiff, Prince Frazier, against both defendants in the sum of $3,500.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. Engebreth, Foreman

Verdict No. V.

We, the Jury, duly impanelled and sworn to try the above entitled cause, find as follows:

For the Plaintiff, Blanche Thomas, against both defendants in the sum of $500.00.

Dated at Anchorage, Alaska, this 24th day of September, 1953.

A. L. Engebreth, Foreman

Whereupon, at the request of the attorneys for the defendants, each member of the jury was polled and responded that the above verdicts were their verdicts, respectively.

Therefore, it is Considered and Adjudged by the Court that the said Plaintiff, Dorothy Neal, do have and recover of and from the said defendants, Matanuska Valley Lines, Inc., and Lois Williams, or either of them, the sum of $75,000.00; that the said Plaintiff, Nathaniel Neal, Jr., do have and recover of and from the said defendants, Matanuska

Valley Lines, Inc. and Lois Williams, or either of them, the sum of $17,500.00; that the said Plaintiff, Wordie Frazier, do have and recover of and from the said defendants, Matanuska Valley Lines, Inc. and Lois Williams, or either of them, the sum of $5,000.00; that the said plaintiff, Prince Frazier, do have and recover of and from the said defendants, Matanuska Valley Lines, Inc. and Lois Williams, or either of them, the sum of $3,500.00; that the said Plaintiff, Blanche Thomas, do have and recover of and from the said defendants, Matanuska Valley Lines, Inc. and Lois Williams, or either of them, the sum of $500.00; and that the said named Plaintiffs recover the further total sum of $1,845.00 as attorneys' fees in these causes, together with costs taxed at $276.70, and hereof let execution issue.

It is Ordered, Adjudged and Decreed that there is no just reason for delay in the entry of final judgment upon the verdicts returned by the jury and received and filed on September 24, 1953, and it is expressly Ordered that such final judgment be entered.

Dated this 21st day of May, 1956.

/s/ J. L. McCARREY, JR.,
Judge of the District Court

Hearing requested with respect to foregoing.—12/27/55. Signed R. H. Cottis.

Acknowledgment of Service attached.
[Endorsed]: Filed May 21, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

M. O. RENDERING ORAL DECISION

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, arguments having been had heretofore and on the 22nd day of May, 1956, in causes No. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants; No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants; and No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Inc., Milton T. Williams and Lois Williams, defendants;

Court now finds that after consideration of the arguments had May 22, 1956, and of the reply brief filed by Defendant Matanuska Valley Lines, by leave of Court, that the ruling of May 21, 1956 in which motion for judgment on the bond was denied; motion for exoneration of sureties on the bond was denied; motion for new trial was denied; and motion to enter judgment under Rule 54 (b) was granted, shall stand.

Entered May 23, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

MOTION FOR A NEW TRIAL PURSUANT TO RULE 59 F.R.C.P.

Comes Now the defendant Matanuska Valley Lines, Inc., in the above entitled action, by and through its attorneys Davis, Renfrew & Hughes, and moves that the verdicts and judgment in the above entitled matter be set aside and a new trial be granted pursuant to Rule 59 of the F.R.C.P.

The grounds for this motion are as follows:

1. Failure of the jury to return a verdict on the cross-complaint (Verdicts No. 6 and 7), which fact requires a new trial in all cases consolidated at the trial of this cause so that one record or one appeal can be undertaken on the entire matter.

2. The absence of evidence sufficient to support the verdicts.

3. The verdicts are contrary to the clear weight of the evidence.

4. Irregularity in the proceedings by which the defendants were prevented from having a fair trial in that the defendants were denied more than a total of three peremptory challenges for all three defendants and in that the trial was conducted in an atmosphere of haste.

5. The damages awarded are excessive and appear to have been given under the influence of passion or prejudice.

6. Various errors of law occurred at the trial and were excepted to, such errors including the admission in evidence of Dr. Starr's deposition without

any showing that the deponent was not available for the trial; instructions 6, 8, 14, 15, 17, 18 and the forms of verdict 1 and 2.

7. Cause A-8413 consolidated herewith was forced to trial before it was at issue and arguments over the matter in court may have influenced the jury by leading it to believe that the defendants were reluctant to have the causes come to trial.

8. Trial of the cases was compelled although none of them was at issue with respect to the cross-complaint of Matanuska Valley Lines, Inc., against the other defendants.

These motions are predicated upon the records, files, proceedings and evidence herein.

Dated at Anchorage, Alaska, this 31st day of May, 1956.

DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Defendant Matanuska Valley Lines, Inc.

Acknowledgment of Service attached.
[Endorsed]: Filed May 31, 1956.

[Title of Court and Causes A-8214, A-8666, A-8413]

M. O. RENDERING ORAL DECISION

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, on request of counsel for defendants, for a new ruling on the motion for new trial and to preclude any doubt as to the date of filing motion for new trial, after entry of final judgment and in order to remove any question that could be raised on appeal as to the timely filing of motion for new trial in causes No. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc, a corp., and John Doe Williams and Lois Williams, defendants; No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Milton T. Williams and Lois Williams, defendants; and No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants;

It Is Ordered Court now denies motion for new trial.

Entered June 1, 1956.

[Title of District Court and Cause No. A-8214.]

NOTICE OF APPEAL

Notice Is Hereby Given, that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, Lewis E. Simpson, Louis Odsather, J. A. Columbus, H. N. Baker, Russell Swank and Norman G. Lange, sureties, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that final judgment entered in this action on the 21st day

of May, 1956, and from the denial, on the same date, of defendants' "Motion to Discharge Bond and Exonerate Sureties".

Dated at Anchorage, Alaska, this 20th day of June, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

[Endorsed]: Filed June 20, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

MOTION TO SET BOND ON APPEAL

Comes Now the defendant, Matanuska Valley Lines, Inc., a corporation, by and through its attorneys Davis, Renfrew & Hughes, and moves this honorable Court to set and establish the amount of the supersedeas bond on appeal.

Dated at Anchorage, Alaska, this 20th day of June, 1956.

DAVIS, RENFREW & HUGHES,
/s/ DAVID H. THORSNESS,
Attorneys for Matanuska Valley
Lines, Inc., a corporation

Acknowledgment of Service attached.

[Endorsed]: Filed July 5, 1956.

[Title of District Court and Cause No. A-8214.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To: The Clerk of the above entitled Court;

To: Wendall P. Kay, J. Earl Cooper and Stringer & Connolly, Attorneys for the Plaintiffs; and

To Whom It May Concern:

Please Take Notice that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, Lewis E. Simpson, Louis Odsather, J. A. Columbus, H. N. Baker, Russell Swank and Norman G. Lange, sureties, and the appellants in this action, designate the entire record of this action as the record on appeal, and specifically direct that all records and files in the Clerk's office pertaining to the above entitled action are to be included in such record, and, among other things, such record is to include specifically, the court reporter's transcript of all proceedings had subsequent to the filing of the opinion herein of the Court of Appeals for the Ninth Circuit, said opinion being filed on December 13, 1955; and all motions and minute orders filed and entered subsequent to the filing of the opinion of the Court of Appeals for the Ninth Circuit above referred to.

The appellants respectfully show that the record in the above entitled case is the same in each of three cases, being Cause Numbers A-8214, A-8413

and A-8666, and that a consolidated record was utilized on appeal and one transcript and one record were used. In designating the entire record, the appellants followed the directions of the Ninth Circuit Court in its opinion of December 13, 1955, and accordingly, the appellants specifically designate Volumes I and II, containing 529 pages, U. S. Circuit Court of Appeals Nos. 14,529 through 14,531, inclusive, used on the appeals on the above mentioned causes, as the initial part of the record in the above captioned cause and related causes herein mentioned. The appellants respectfully request that throughout this appeal of the three causes, consolidated for purpose of trial by order of the Trial Court under date of August 24, 1953, one record and one transcript be utilized to obviate the necessity of additional costs.

Dated at Anchorage, Alaska, this 6th day of July, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed July 6, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

HEARING ON MOTION TO SET BOND ON APPEAL

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, causes Nos. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., a Corp., John Doe Williams and Lois Williams, defendants; No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., a corporation, and John Doe Williams and Lois Williams; and No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Inc., a corporation, Milton Williams and Lois Williams, defendants; came on regularly for Hearing on Motion to Set Bond on Appeal; David Thorsness present for and in behalf of defendants, Wendell P. Kay present for and in behalf of plaintiffs; the following proceedings were had, to-wit:

Argument to Court was had by David Thorsness for and in behalf of Defendants.

Argument to Court was had by Wendell P. Kay for and in behalf of Plaintiffs.

Argument to the Court was had by David Thorsness for and in behalf of Defendants.

Whereupon, Court having heard the argument of

respective counsel and being fully and duly advised in the premises, denied motion to set bond on appeal.

Entered July 20, 1956.

[Title of District Court and Cause No. A-8214.]

AMENDMENT OF DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To: The Clerk of the above entitled Court;

To: Wendall P. Kay and Stringer & Connolly, Attorneys for the Plaintiffs; and

To Whom It May Concern:

Please Take Notice that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, Lewis E. Simpson, Louis Odsather, J. A. Columbus, H. N. Baker, Russell Swank and Norman G. Lange, sureties, and the appellants in this action, amend their designation of record to allow all briefs in support of motions to be deleted from the original record, but specifically designate that all bonds to stay execution to act as supersedeas bonds on file herein, filed October 30, 1953, be made a part of the record on appeal, and that the copies thereof may be reproductions by photographic process of the original bonds on file in the office of the Clerk of Court.

The appellants above named further designate as part of the record, their original designation of contents of record on appeal, and this amendment of designation of contents of record on appeal.

Dated at Anchorage, Alaska, this 16th day of August, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed August 16, 1956.

[Title of District Court and Cause No. A-8214.]

BOND ON STAY OF EXECUTION

Whereas, the defendant, Matanuska Valley Lines, Inc., has among other things filed motions for a new trial and for judgment notwithstanding the jury's verdict in this cause and has applied for a Stay of Execution pending the determination of said motions.

Now, Therefore, in consideration of the premises, General Casualty Company of America, a corporation organized under the laws of the State of Washington and authorized to do business within the Territory of Alaska, is bound unto the plaintiff, Dor-

othy Neal, in the sum of Eleven Thousand Three Hundred Seventy-eight Dollars and Thirty Cents ($11,378.30) and unto the plaintiff Nathaniel Neal, Jr., in the sum of Ten Thousand Dollars ($10,000.00).

Witness the hand and seal of General Casualty Company of America this 30th day of October, 1953.

The condition of this bond, however, is that if the pending motions for a new trial or for judgment notwithstanding the verdict be granted then this bond shall be null and void, but if the said motions be denied and timely notice of appeal to the United States Court of Appeals for the Ninth Circuit be filed and the said appeal be prosecuted with effect then this bond shall be null and void excepting that in such case it shall apply upon whatever amount of supersedeas may be fixed; providing that if the said motions be denied and the defendant, Matanuska Valley Lines, Inc., neglects to file a timely notice of appeal and prosecute same with effect then this bond to the extent indicated in favor of the respective plaintiffs individually is conditioned upon the satisfaction of the judgment herein, together with costs, interest and damages for delay.

GENERAL CASUALTY COMPANY
OF AMERICA, Surety,
/s/ By GRACE M. McCONNELL,
As Attorney in Fact

[Endorsed]: Filed October 30, 1953.

[Title of Court and Causes A-8214, A-8413, A-8666]

CLERK'S CERTIFICATE ORIGINAL RECORD

I, Wm. A. Hilton, Clerk of the above-entitled Court, do hereby certify that pursuant (1) to the provisions of Rule 10 (1) of the United States Court of Appeals, Ninth Circuit, (2) to rules 75 (g) and (o) of the Federal Rules of Civil Procedure, (3) to the decision of the United States Court of Appeals in the above-entitled causes dated December 13, 1955, and (4) to the designations of counsel for the defendants-appellants, I am transmitting herewith the Original Papers in my office dealing with the above-entitled actions from and after October 29, 1954, together with the Court Reporter's transcript of the Court proceedings in said actions subsequent to said date, and together with plaintiffs' exhibits 1, 2-A, 2-B and 2-C, and defendants' exhibits A, B, D, H and H-1.

The original papers hereto attached are to supplement and become a part of the transcript of record in the above-entitled cases as printed by the United States Court of Appeals, Ninth Circuit, on February 4, 1955.

The papers herewith transmitted, together with the printed record hereinabove mentioned, constitute the record on appeal from the final judgment filed and entered in the above-entitled actions by the above-entitled Court on May 21, 1956, to the United

States Court of Appeals, Ninth Circuit, San Francisco, California.

Dated at Anchorage, Alaska, this 16th day of August, 1956.

[Seal] /s/ WM. A. HILTON,
Clerk

[Endorsed]: No. 15252. United States Court of Appeals for the Ninth Circuit. Matanuska Valley Lines, Inc., a corporation, Appellant, vs. Dorothy Neal and Nathaniel Neal, Jr., Appellees. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed: September 4, 1956.

/s/PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15252

MATANUSKA VALLEY LINES, INC., a corporation, and GENERAL CASUALTY COMPANY OF AMERICA, a corporation, LEWIS E. SIMPSON, LOUIS ODSATHER, J. A. COLUMBUS, H. N. BAKER, RUSSELL SWANK and NORMAN G. LANGE,

Appellants.

vs.

DOROTHY NEAL and NATHANIEL NEAL, JR.,

Appellees.

STATEMENT OF POINTS

Matanuska Valley Lines, Inc., a corporation, and General Casualty Company of America, a corporation, and Lewis E. Simpson, Louis Odsather, J. A. Columbus, H. N. Baker, Russell Swank and Norman G. Lange, appellants, herewith present to the Court of Appeals for the Ninth Circuit the following particulars and points upon which it is claimed the Trial Court erred:

1. The appellants adopt that statement of points heretofore filed herein and made a part of the record on appeal previously had in this case, dismissed by the Court of Appeals for the Ninth Circuit by its opinion filed on December 13, 1955, former docket number 14,529.

2. In failing to grant the motion of the defendant-appellant Matanuska Valley Lines, Inc., for a new trial, filed subsequent to the filing of the opin-

ion of the Court of Appeals for the Ninth Circuit on December 13, 1955, and subsequent to the corrected judgment filed herein on May 21, 1956.

3. The denial of the motion of Matanuska Valley Lines, Inc. for motion to discharge bond and exonerate bond surety.

4. The denial of the motion of Matanuska Valley Lines, Inc. to set bond on appeal.

Dated at Anchorage, Alaska, this 22nd day of August, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed August 29, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

PETITION TO USE PREVIOUSLY PRINTED RECORD, TO USE ORIGINAL PRINTED BRIEFS AND FILE SUPPLEMENTAL BRIEFS, AND FOR RE-ARGUMENT

Come Now the appellants above named, by and through their attorneys, and petition this Honorable Court as follows:

1. That appellants be allowed to use as a portion of the printed record herein, the previously printed

record in the former appeal herein, former Docket No. 14,529, as indicated in the Court's opinion filed December 13, 1955, in addition to the record designated by appellants on file herein.

2. That appellants be allowed to use the original printed briefs in the former appeal, docket No. 14,529, and to supplement such briefs by supplemental briefs concerning matters occurring subsequent to the former appeal.

3. That this Honorable Court allow full re-argument of this appeal due to the lapse of time of proceedings had subsequent to the former appeal, and the change in this Honorable Court's membership, all occurring subsequent to the original appeal, Docket No. 14,529.

Dated at Anchorage, Alaska, this 11th day of September, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

So Ordered.

/s/ H. T. BONE,
Chief Judge
/s/ RICHARD H. CHAMBERS,
United States Circuit Judge

Acknowledgment of Service attached.

[Endorsed]: Filed October 2, 1956. Paul P. O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 14530

MATANUSKA VALLEY LINES, INC., a Corporation, vs. BLANCHE THOMAS.

MANDATE

United States of America, ss:
The President of the United States of America.
To the Honorable, the Judges of the District Court for the District of Alaska, Third Division, Greeting:

Whereas, lately in the District Court for the District of Alaska, Third Division, before you or some of you, in a cause between Blanche Thomas, Plaintiff, and Matanuska Valley Lines, Inc., a Corporation, and John Doe Williams and Lois Williams, Defendants, No. A-8413, a Judgment was duly filed and entered on the 14th day of October, 1953; which said Judgment is of record and fully set out in said cause in the office of the Clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof,

And Whereas, the said Matanuska Valley Lines, Inc., a Corporation, appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Con-

gress, in such cases made and provided, fully and at large appears.

And Whereas, on the 24th day of October, in the year of our Lord, one thousand nine hundred and fifty-five, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the appeal in this cause be, and hereby is, dismissed. (December 13, 1955.)

You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the sixteenth day of January in the year of our Lord one thousand nine hundred and fifty-six.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk, United States Court of Appeals for the Ninth Circuit.

Entered March 16, 1956.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, March 16, 1956.

In the District Court for the District of Alaska, Third Division

No. A-8413

BLANCHE THOMAS, Plaintiff,

vs.

MATANUSKA VALLEY LINES, INC., a corporation, and JOHN DOE WILLIAMS and LOIS WILLIAMS, Defendants.

MOTION FOR ISSUANCE OF CERTIFICATE AND ORDER

Comes Now the plaintiffs in the above entitled cause and move this Honorable Court for an Order and Certificate to be entered, nunc pro tunc, directing the entry of final judgment upon verdicts I, II, III, IV and V, received and filed in the above entitled cause on September 24, 1953, and expressly determining that there is no just reason for delay.

This motion is made and based upon Rule 54(b) and Rule 63, Federal Rules of Civil Procedure, and upon all the records, papers and files in this cause.

/s/ WENDELL P. KAY,
Of Attorneys for Plaintiffs

[Endorsed]: Filed November 2, 1955.

[Title of District Court and Cause No. A-8413.]

MOTION TO DISCHARGE BOND AND EXONERATE BOND SURETY

Comes now the defendant, Matanuska Valley Lines, Inc., by and through their attorneys of record, and hereby moves the court for an order discharging the cost bond and supersedeas bond heretofore filed in this cause, and for a further order exonerating the sureties from all liability thereon. This motion is based upon the following:

1. There was no judgment to supersede.

2. That the opinion of the United States Court of Appeals for the Ninth Circuit filed December 13, 1955, does not require payment of costs.

Dated this 6th day of January, 1956.

MATANUSKA VALLEY LINES, INC.,
HELLENTHAL, HELLENTHAL & COTTIS,
/s/ By RALPH H. COTTIS,
Attorneys for Defendant

DAVIS, RENFREW & HUGHES,
/s/ By WILLIAM W. RENFREW,
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed January 6, 1956.

[Title of District Court and Cause No. A-8413.]

MOTION TO SET ASIDE VERDICT OR IN THE ALTERNATIVE MOTION FOR A NEW TRIAL

I.

The defendant, Matanuska Valley Lines, Inc., in the above action, by its counsel, moves the court in accordance with Rule 50 of the Rules of Civil Procedure, that verdict No. 5 be set aside and that it have judgment entered in accordance with its motion for directed verdicts which was made at the close of all the evidence herein.

II.

That said defendant in the alternative moves the court that the said verdict be set aside and a new trial granted.

III.

The grounds for this motion are as follows:

1. Refusal of the trial court to comply with Rule 54 B, Federal Rules of Civil Procedure, which prevented the defendant from completing its appeal and getting a decision on the merits from the circuit court.

2. Failure of the jury to return a verdict on the cross-complaint (Verdicts No. 6 and 7), which fact requires a new trial in all cases consolidated at the trial of this cause so that one record or one appeal can be undertaken on the entire matter.

3. The absence of evidence sufficient to support the verdicts.

4. The verdicts are contrary to the clear weight of the evidence.

5. Irregularity in the proceedings by which the defendants were prevented from having a fair trial in that the defendants were denied more than a total of three peremptory challenges for all three defendants and in that the trial was conducted in an atmosphere of haste.

6. The damages awarded are excessive and appear to have been given under the influence of passion or prejudice.

7. Various errors of law occurred at the trial and were excepted to, such errors including the admission in evidence of Dr. Starr's deposition without any showing that the deponent was not available for the trial; instructions 6, 8, 14, 15, 17, 18 and the form of verdict 5.

8. This cause was forced to trial before it was at issue and arguments over the matter in court may have influenced the jury by leading it to believe that the defendants were reluctant to have the cause come to trial.

9. Trial of the cases was compelled although none of them were at issue with respect to the cross-complaint of Matanuska Valley Lines, Inc., against the other defendants.

These motions are predicated upon the records, files, proceedings and evidence herein.

This motion supplements that dated October 5, 1953, and in no manner waives the relief sought by said former motion or the grounds set forth for such relief.

Dated at Anchorage, Alaska, this 6th day of January, 1956.

MATANUSKA VALLEY LINES, INC.,
HELLENTHAL, HELLENTHAL & COTTIS,
/s/ By RALPH H. COTTIS,
Attorneys for Defendant
DAVIS, RENFREW & HUGHES,
/s/ By WILLIAM W. RENFREW,
Attorneys for Defendant

Acknowledgment of Service attached.
[Endorsed]: Filed January 6, 1956.

[Title of District Court and Cause No. A-8413.]

MOTION FOR JUDGMENT ON SUPERSEDEAS BOND

Motion

Comes Now the plaintiffs, by and through John R. Connelly and Wendell P. Kay, their attorneys, and move the Court to enter judgment against E. H. Oling, Joe Blackard, Russell Swank, Lewis E. Simpson, Louis Odsather, Norman G. Lange, J. A. Columbus, M. W. Clark, Loran E. Camon, Lena Denison, John T. Campbell, Fred J. Snyder, H. M. Baker, M. B. Kirkpatrick, John H. Clawson, Frank M. Reed, J. C. Morris, Robert N. Kessler and E. D. Hillstrand, and in favor of these plaintiffs for the total sum of $80,000.00, and against each of them in

the amount in which the said E. H. Oling, Joe Blackard, Russell Swank, Lewis E. Simpson, Louis Odsather, Norman G. Lange, J. A. Columbus, M. W. Clark, Loran E. Camon, Lena Denison, John T. Campbell, Fred J. Snyder, H. M. Baker, M. B. Kirkpatrick, John H. Clawson, Frank M. Reed, J. C. Morris, Robert N. Kessler and E. D. Hillstrand, respectively, became liable upon that certain supersedeas bond dated the 9th day of April, 1954, and filed in the above entitled cause on the said 9th day of April, 1954.

This motion is based upon the ground that the appeal in the above entitled cause taken by the defendant, Matanuska Valley Lines, Inc., has now been dismissed by the Court of Appeals for the Ninth Circuit, and upon all the pleadings, papers, records and files in this action.

Dated this 11th day of April, 1956.

/s/ WENDELL P. KAY,
Of Attorneys for Plaintiffs

Acknowledgment of Service attached.

[Endorsed]: Filed April 17, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

M. O. RENDERING ORAL DECISION

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, arguments having been had

heretofore and on the 22nd day of May, 1956, in causes No. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants; No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants; and No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Inc., Milton T. Williams and Lois Williams, defendants;

Court now finds that after consideration of the arguments had May 22, 1956, and of the reply brief filed by Defendant Matanuska Valley Lines, by leave of Court, that the ruling of May 21, 1956 in which motion for judgment on the bond was denied; motion for exoneration of sureties on the bond was denied; motion for new trial was denied; and motion to enter judgment under Rule 54 (b) was granted, shall stand.

Entered May 23, 1956.

[Title of Court and Causes A-8214, A-8666, A-8413]

M. O. RENDERING ORAL DECISION

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, on request of counsel for de-

fendants, for a new ruling on the motion for new trial and to preclude any doubt as to the date of filing motion for new trial, after entry of final judgment and in order to remove any question that could be raised on appeal as to the timely filing of motion for new trial in causes No. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., a corp., and John Doe Williams and Lois Williams, defendants; No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Milton T. Williams and Lois Williams, defendants; and No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants;

It Is Ordered Court now denies motion for new trial.

Entered June 1, 1956.

[Title of District Court and Cause No. A-8413.]

NOTICE OF APPEAL

Notice Is Hereby Given, that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, surety, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that final judgment entered in this action on the 21st day of May, 1956, and from the denial, on the same date, of defendants' "Motion to Discharge Bond and Exonerate Sureties".

Dated at Anchorage, Alaska, this 20th day of June, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

[Endorsed]: Filed June 20, 1956.

[Title of District Court and Cause No. A-8413.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To: The Clerk of the above entitled Court;
To: Wendall P. Kay, J. Earl Cooper and Stringer & Connelly, Attorneys for the Plaintiffs; and
To Whom It May Concern:

Please Take Notice that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, surety, and the appellants in this action, designate the entire record of this action as the record on appeal, and specifically direct that all records and files in the Clerk's office pertaining to the above entitled action are to be included in such record, and, among other things, such record is to include specifically, the court reporter's transcript of all proceedings had subsequent to the filing of the opinion herein of the Court of Appeals for the Ninth Circuit, said opinion being filed on December 13, 1955; and all motions and minute orders filed and entered subse-

quent to the filing of the opinion of the Court of Appeals for the Ninth Circuit above referred to.

The appellants respectfully show that the record in the above entitled case is the same in each of three cases, being Cause Numbers A-8214, A-8413 and A-8666, and that a consolidated record was utilized on appeal and one transcript and one record were used. In designating the entire record the appellants followed the directions of the Ninth Circuit Court in its opinion of December 13, 1955, and accordingly, the appellants specifically designate Volumes I and II, containing 529 pages, U. S. Circuit Court of Appeals Nos. 14,529 through 14,531, inclusive, used on the appeals on the above mentioned causes, as the initial part of the record in the above captioned cause and related causes herein mentioned. The appellants respectfully request that throughout this appeal of the three causes, consolidated for purpose of trial by order of the Trial Court under date of August 24, 1953, one record and one transcript be utilized to obviate the necessity of additional costs.

Dated at Anchorage, Alaska, this 6th day of July, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed July 6, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

HEARING ON MOTION TO SET BOND ON APPEAL

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, causes Nos. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., a Corp., John Doe Williams and Lois Williams, defendants; No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., a corporation, and John Doe Williams and Lois Williams; and No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Inc., a corporation, Milton Williams and Lois Williams, defendants; came on regularly for Hearing on Motion to Set Bond on Appeal; David Thorsness present for and in behalf of defendants, Wendell P. Kay present for and in behalf of plaintiffs; the following proceedings were had, to-wit:

Argument to Court was had by David Thorsness for and in behalf of Defendants.

Argument to Court was had by Wendell P. Kay for and in behalf of Plaintiffs.

Argument to the Court was had by David Thorsness for and in behalf of Defendants.

Whereupon, Court having heard the argument of respective counsel and being fully and duly advised in the premises, denied motion to set bond on appeal.

Entered July 20, 1956.

[Title of District Court and Cause No. A-8413.]

AMENDMENT OF DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To: The Clerk of the above entitled Court;

To: Wendall P. Kay and Stringer & Connolly, Attorneys for the Plaintiffs; and

To Whom It May Concern:

Please Take Notice that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, surety, both appellants in this action, amend their designation of record to allow all briefs in support of motions to be deleted from the original record, but specifically designate that all bonds to stay execution to act as supersedeas bonds on file herein, filed October 30, 1953, be made a part of the record on appeal, and that the copies thereof may be reproductions by photographic process of the original bonds on file in the office of the Clerk of Court.

The appellants above named further designate as part of the record, their original designation of con-

tents of record on appeal, and this amendment of designation of contents of record on appeal.

Dated at Anchorage, Alaska, this 16th day of August, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed August 16, 1956.

[Title of District Court and Cause No. A-8413.]

BOND ON STAY OF EXECUTION

Whereas, the defendant, Matanuska Valley Lines, Inc., has among other things filed motions for a new trial and for judgment notwithstanding the jury's verdict in this cause and has applied for a Stay of Execution pending the determination of said motions.

Now, Therefore, in consideration of the premises, General Casualty Company of America, a corporation organized under the laws of the State of Washington and authorized to do business within the Territory of Alaska, is bound unto the plaintiff, Blanche Thomas, in the sum of One Hundred Twenty-one and 70/100 Dollars ($121.70).

Witness the hand and seal of General Casualty

Company of America this 30th day of October, 1953.

The condition of this bond, however, is that if the pending motions for a new trial or for judgment notwithstanding the verdict be granted then this bond shall be null and void, but if the said motions be denied and timely notice of appeal to the United States Court of Appeals for the Ninth Circuit be filed and the said appeal be prosecuted with effect then this bond shall be null and void excepting that in such case it shall apply upon whatever amount of supersedeas may be fixed; providing that if the said motions be denied and the defendant, Matanuska Valley Lines, Inc., neglects to file a timely notice of appeal and prosecute same with effect then this bond to the extent indicated in favor of the respective plaintiff is conditioned upon the satisfaction of the judgment herein, together with costs, interest and damages for delay.

GENERAL CASUALTY COMPANY
OF AMERICA, Surety,
/s/ By GRACE M. McCONNELL,
As Attorney in Fact

[Endorsed]: Filed October 30, 1953.

[Endorsed]: No. 15,253. United States Court of Appeals for the Ninth Circuit. Matanuska Valley Lines, Inc., a corporation, Appellant, vs. Blanche Thomas, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed: September 4, 1956.

/s/PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 15,253

MATANUSKA VALLEY LINES, INC., a corporation, and GENERAL CASUALTY COMPANY OF AMERICA, a corporation,
Appellants,

vs.

BLANCHE THOMAS, Appellee.

STATEMENT OF POINTS

Matanuska Valley Lines, Inc., a corporation, and General Casualty Company of America, a corporation, appellants, herewith present to the Court of Appeals for the Ninth Circuit the following particulars and points upon which it is claimed the Trial Court erred:

1. The appellants adopt that statement of points hereofore filed herein and made a part of the record on appeal previously had in this case, dismissed by the Court of Appeals for the Ninth Circuit by its opinion filed on December 13, 1955, former docket number 14,530.

2. In failing to grant the motion of the defendant-appellant Matanuska Valley Lines, Inc., for a new trial, filed subsequent to the filing of the opinion

of the Court of Appeals for the Ninth Circuit on December 13, 1955, and subsequent to the corrected judgment filed herein on May 21, 1956.

3. The denial of the motion of Matanuska Valley Lines, Inc., for motion to discharge bond and exonerate bond surety.

4. The denial of the motion of Matanuska Valley Lines, Inc., to set bond on appeal.

Dated at Anchorage, Third Judicial Division, Territory of Alaska, this 22nd day of August, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed August 29, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

PETITION TO USE PREVIOUSLY PRINTED RECORD, TO USE ORIGINAL PRINTED BRIEFS AND FILE SUPPLEMENTAL BRIEFS, AND FOR RE-ARGUMENT

Come Now the appellants above named, by and through their attorneys, and petition this Honorable Court as follows:

1. That appellants be allowed to use as a portion of the printed record herein, the previously printed

record in the former appeal herein, docket No. 14,530, as indicated in the Court's opinion filed December 13, 1955, in addition to the record designated by appellants on file herein.

2. That appellants be allowed to use the original printed briefs in the former appeal, docket No. 14,-530, and to supplement such briefs by additional briefs concerning matters occurring subsequent to the former appeal.

3. That this Honorable Court allow full re-argument of this appeal due to the lapse of time of proceedings had subsequent to the former appeal, and the change in this Honorable Court's membership, all occurring subsequent to the original appeal, Docket No. 14,530.

Dated at Anchorage, Alaska, this 11th day of September, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

So Ordered.

/s/ HOMER T. BONE,
/s/ RICHARD H. CHAMBERS,
United States Circuit Judges

Acknowledgment of Service attached.

[Endorsed]: Filed October 2, 1956. Paul P. O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,531

MATANUSKA VALLEY LINES, INC, a Corporation, vs. WORDIE FRAZIER and PRINCE FRAZIER.

MANDATE

United States of America, ss:

The President of the United States of America

To the Honorable, the Judges of the District Court for the District of Alaska, Third Division, Greeting:

Whereas, lately in the District Court for the District of Alaska, Third Division, before you or some of you, in a cause between Wordie Frazier and Prince Frazier, Plaintiffs, and Matanuska Valley Lines, Inc., a Corporation, and John Doe Williams and Lois Williams, Defendants, No. A-8666, a Judgment was duly filed and entered on the 14th day of October, 1953; which said Judgment is of record and fully set out in said cause in the office of the Clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof,

And Whereas, the said Matanuska Valley Lines, Inc., a Corporation, appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Ninth Circuit by

virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 24th day of October, in the year of our Lord, one thousand nine hundred and fifty-five, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the appeal in this cause be, and hereby is, dismissed. (December 13, 1955).

You, Therefore, Are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States the sixteenth day of January in the year of our Lord one thousand nine hundred and fifty-six.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk, United States Court of Appeals for the Ninth Circuit.

Entered March 16, 1956.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, March 16, 1956.

In the District Court for the District of Alaska, Third Division

No. A-8666

WORDIE FRAZIER and PRINCE FRAZIER, Plaintiffs,

vs.

MATANUSKA VALLEY LINES, INC., a corporation, and JOHN DOE WILLIAMS and LOIS WILLIAMS, Defendants.

M. O. RENDERING ORAL DECISION

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time motions having been submitted on briefs in cause No. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., Plaintiffs, versus Matanuska Valley Lines, Inc., a corporation, John Doe Williams and Lois Williams, Defendants; cause No. A-8413, entitled Blanche Thomas, Plaintiff, versus Matanuska Valley Lines, Inc., a corporation and John Doe Williams and Lois Williams, Defendants; and cause No. A-8666, entitled Wordie Frazier and Prince Frazier, Plaintiffs, versus Matanuska Valley Lines, Inc., a corporation, Milton T. Williams and Lois Williams, Defendants.

Whereupon, Court now denies motion for judgment on bond; denies motion exonerating sureties

on the bond; denies motion for new trial; grants motion to enter judgment under Rule 54 (b).

Entered May 21, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

M. O. RENDERING ORAL DECISION

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, arguments having been had heretofore and on the 22nd day of May, 1956, in causes No. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants; No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants; and No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Inc., Milton T. Williams and Lois Williams, defendants;

Court now finds that after consideration of the arguments had May 22, 1956, and of the reply brief filed by Defendant Matanuska Valley Lines, by leave of Court, that the ruling of May 21, 1956 in which motion for judgment on the bond was denied; motion for exoneration of sureties on the bond was denied; motion for new trial was denied; and mo-

tion to enter judgment under Rule 54 (b) was granted, shall stand.

Entered May 23, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

M. O. RENDERING ORAL DECISION

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, on request of counsel for defendants, for a new ruling on the motion for new trial and to preclude any doubt as to the date of filing motion for new trial, after entry of final judgment and in order to remove any question that could be raised on appeal as to the timely filing of motion for new trial in causes No. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., a corp., and John Doe Williams and Lois Williams, defendants; No. A-8666, entitled Wordie Frazier and Prince Frazier, plaintiffs, versus Matanuska Valley Lines, Milton T. Williams and Lois Williams, defendants; and No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., John Doe Williams and Lois Williams, defendants:

It Is Ordered Court now denies motion for new trial.

Entered June 1, 1956.

[Title of District Court and Cause No. A-8666.]

NOTICE OF APPEAL

Notice Is Hereby Given, that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, surety, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that final judgment entered in this action on the 21st day of May, 1956, and from the denial, on the same date, of defendants' "Motion to Discharge Bond and Exonerate Sureties".

Dated at Anchorage, Alaska, this 20th day of June, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

[Endorsed]: Filed June 20, 1956.

[Title of District Court and Cause No. A-8666.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To: The Clerk of the above entitled Court;
To: Wendall P. Kay, J. Earl Cooper and Stringer & Connolly, Attorneys for the Plaintiffs; and
To Whom It May Concern:

Please Take Notice that Matanuska Valley Lines,

Inc., a corporation, defendant above named, and General Casualty Company, a corporation, surety, and the appellants in this action, designate the entire record of this action as the record on appeal, and specifically direct that all records and files in the Clerk's office pertaining to the above entitled action are to be included in such record, and, among other things, such record is to include specifically, the court reporter's transcript of all proceedings had subsequent to the filing of the opinion herein of the Court of Appeals for the Ninth Circuit, said opinion being filed on December 13, 1955; and all motions and minute orders filed and entered subsequent to the filing of the opinion of the Court of Appeals for the Ninth Circuit above referred to.

The appellants respectfully show that the record in the above entitled case is the same in each of three cases, being Cause Numbers A-8214, A-8413, and A-8666, and that a consolidated record was utilized on appeal and one transcript and one record were used. In designating the entire record, the appellants followed the directions of the Ninth Circuit Court in its opinion of December 13, 1955, and accordingly, the appellants specifically designate Volumes I and II, containing 529 pages, U. S. Circuit Court of Appeals Nos. 14,529 through 14,531, inclusive, used on the appeals on the above mentioned causes, as the initial part of the record in the above captioned cause and related causes herein mentioned. The appellants respectfully request that throughout this appeal of the three causes, con-

solidated for purpose of trial by order of the Trial Court under date of August 24, 1953, one record and one transcript be utilized to obviate the necessity of additional costs.

Dated at Anchorage, Alaska this 6th day of July, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.
[Endorsed]: Filed July 6, 1956.

[Title of Court and Causes A-8214, A-8413, A-8666]

HEARING ON MOTION TO SET BOND ON APPEAL

Now at this time, these causes coming on to be heard before the Honorable J. L. McCarrey, Jr., District Judge, the following proceedings were had, to-wit:

Now at this time, causes Nos. A-8214, entitled Dorothy Neal and Nathaniel Neal, Jr., plaintiffs, versus Matanuska Valley Lines, Inc., a Corp., John Doe Williams and Lois Williams, defendants; No. A-8413, entitled Blanche Thomas, plaintiff, versus Matanuska Valley Lines, Inc., a corporation, and John Doe Williams and Lois Williams; and No. A-8666, entitled Wordie Frazier and Prince

Frazier, plaintiffs, versus Matanuska Valley Lines, Inc., a corporation, Milton Williams and Lois Williams, defendants; came on regularly for Hearing on Motion to Set Bond on Appeal; David Thorsness present for and in behalf of defendants, Wendell P. Kay present for and in behalf of plaintiffs; the following proceedings were had, to-wit:

Argument to Court was had by David Thorsness for and in behalf of Defendants.

Argument to Court was had by Wendell P. Kay for and in behalf of Plaintiffs.

Argument to the Court was had by David Thorsness for and in behalf of Defendants.

Whereupon, Court having heard the argument of respective counsel and being fully and duly advised in the premises, denied motion to set bond on appeal.

Entered July 20, 1956.

[Title of District Court and Cause No. A-8666.]

AMENDMENT OF DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To: The Clerk of the above entitled Court;

To: Wendall P. Kay and Stringer & Connelly, Attorneys for the Plaintiffs; and

To Whom It May Concern:

Please Take Notice that Matanuska Valley Lines, Inc., a corporation, defendant above named, and General Casualty Company, a corporation, surety,

both appellants in this action, amend their designation of record to allow all briefs in support of motions to be deleted from the original record, but specifically designate that all bonds to stay execution to act as supersedeas bonds on file herein, filed October 30, 1953, be made a part of the record on appeal, and that the copies thereof may be reproductions of photographic process of the original bonds on file in the office of the Clerk of Court.

The appellants above named further designate as part of the record, their original designation of contents of record on appeal, and this amendment of designation of contents of record on appeal.

Dated at Anchorage, Alaska, this 16th day of August, 1956.

HELLENTHAL & COTTIS,
MARTIN, SHORTS & BEVER,
DAVIS, RENFREW & HUGHES,
/s/ By DAVID H. THORSNESS,
Attorneys for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed August 16, 1956.

[Title of District Court and Cause No. A-8666.]

BOND ON STAY OF EXECUTION

Whereas, the defendant, Matanuska Valley Lines, Inc., has among other things filed motions for a new trial and for judgment notwithstanding the jury's

verdict in this cause and has applied for a Stay of Execution pending the determination of said motions.

Now, Therefore, in consideration of the premises, General Casualty Company of America, a corporation organized under the laws of the State of Washington and authorized to do business within the Territory of Alaska, is bound unto the plaintiff, Wordie B. Frazier, in the sum of Five Thousand Dollars ($5,000.00) and unto the plaintiff Prince Frazier in the sum of Three Thousand Five Hundred Dollars ($3,500.00).

Witness the hand and seal of General Casualty Company of America this 30th day of October, 1953.

The condition of this bond, however, is that if the pending motions for a new trial or for judgment notwithstanding the verdict be granted then this bond shall be null and void, but if the said motions be denied and timely notice of appeal to the United States Court of Appeals for the Ninth Circuit be filed and the said appeal be prosecuted with effect then this bond shall be null and void excepting that in such case it shall apply upon whatever amount of supersedeas may be fixed; providing that if the said motions be denied and the defendant, Matanuska Valley Lines, Inc., neglects to file a timely notice of appeal and prosecute same with effect then this bond to the extent indicated in favor of the respective plaintiffs individually is conditioned upon

the satisfaction of the judgment herein, together with costs, interest and damages for delay.

GENERAL CASUALTY COMPANY
OF AMERICA, Surety,

/s/ By GRACE M. McCONNELL,
As Attorney in Fact

[Endorsed]: Filed October 30, 1953.

[Endorsed]: No. 15,254. United States Court of Appeals for the Ninth Circuit. Matanuska Valley Lines, Inc., a corporation, Appellant, vs. Wordie Frazier and Prince Frazier, Appellees. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed: September 4, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15,254

MATANUSKA VALLEY LINES, INC., a corporation, and GENERAL CASUALTY COMPANY OF AMERICA, a corporation,

Appellants,

vs.

WORDIE FRAZIER and PRINCE FRAZIER,

Appellees.

STATEMENT OF POINTS

Matanuska Valley Lines, Inc., a corporation, and General Casualty Company of America, a corporation, appellants, herewith present to the Court of Appeals for the Ninth Circuit the following particulars and points upon which it is claimed the Trial Court erred:

1. The appellants adopt that statement of points heretofore filed herein and made a part of the record on appeal previously had in this case, dismissed by the Court of Appeals for the Ninth Circuit by its opinion filed on December 13, 1955, former docket number 14,531.

2. In failing to grant the motion of the defendant-appellant Matanuska Valley Lines, Inc. for a new trial, filed subsequent to the filing of the opinion of the Court of Appeals for the Ninth Circuit on December 13, 1955, and subsequent to the corrected judgment filed herein on May 21, 1956.

In the District Court for the District of Alaska, Third Division

Cause No. A-8214

Dorothy Neal and Nathaniel Neal, Jr., Plaintiffs, vs. Matanuska Valley Lines, Inc., a Corporation, Milton T. Williams and Lois Williams, Defendants.

Cause No. A-8413

Blanche Thomas, Plaintiff, vs. Matanuska Valley Lines, Inc., a Corporation, Milton T. Williams and Lois Williams, Defendants.

Cause No. A-8666

Wordie Frazier and Prince Frazier, Plaintiffs, vs. Matanuska Valley Lines, Inc., a Corporation, Milton T. Williams and Lois Williams, Defendants.

CONSOLIDATED TRANSCRIPT OF PROCEEDINGS

Before: The Honorable J. L. McCarrey, Jr., U. S. District Judge. [1*]

* * * * *

Anchorage Alaska, May 21, 1956, 4:15 p.m.

The Court: In the case of Dorothy Neal and Nathaniel Neal, Jr., Plaintiffs vs. Matanuska Valley Lines, Inc., et al., Defendants, and the case of Blanche Thomas vs. the same corporation, and Wordie Frazier et al. vs. the same corporation,

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Civil A-8214, A-8413 and A-8666; this is a matter that was tried before the Honorable George W. Folta and was appealed to the Ninth Circuit Court of Appeals and on the 13th day of December, 1955, they had rendered their written opinion. The matter comes before this Court upon the following motions: a motion for judgment on bond, (2) a motion exonerating the sureties on the bond, (3) a motion for new trial, (4) a motion to enter judgment in conformance with Rule 54(b).

This matter has been submitted to the Court based upon briefs which are rather exhaustive in nature. Having considered the briefs and the argument of the law contained therein, as well as the opinion of the Ninth Circuit Court of Appeals, the Court does now deny the motion for judgment on the bond; denies the motion exonerating sureties on the bond; denies the motion for new trial and I grant the motion for the entry of judgment under Rule 54(b), and at this time, the Court would enter a minute order setting the cross-claim down for trial as soon as the Court has had an opportunity to discuss this matter with counsel for respective [29] litigants as to when would be the proper time for it. At least, for the time being, it may go on the suspense calendar. A minute order may be entered in conformance with the ruling of the Court and if the Court has time—I would appreciate you calling all counsel this afternoon since these matters were set down for argument tomorrow morning. Would you please advise counsel that their briefs cover the situation rather thoroughly, and

in order to save their time as well as the Court's, after the Court has once made up its mind, I have ruled today without the benefit of oral argument as I do not feel it would add much to that which has heretofore been submitted in their written briefs. [30]

Anchorage, Alaska, May 22, 1956,
9:45 a.m. and 2 p.m.

The Court: Mr. Renfrew.

Mr. Renfrew: I have reference, your Honor, to these consolidated cases, No. A-8214, A-8413 and A-8666, more commonly known to the Court as the Matanuska Valley Lines, Inc., Appeal. I am making this statement for the record, your Honor.

The Court: Very well.

Mr. Renfrew: Sometime ago, these various motions were filed by both the Plaintiffs and the Defendants in these cases, at which time the Court allowed the Plaintiff until May 1st to file a brief and the Defendant likewise, until May 1st to file a brief; and on the date of that arrangement in open court, the Court set the 18th day of May as a time for oral argument on the briefs. I requested that additional time—after advising the Court that we had associate Seattle counsel who were materially interested and who were assisting us in the preparation of various points of authorities in regard to this matter. Inadvertently, your Honor, the motion calendar showed that the argument was put down for the 4th of May on a subsequent motion filed by Mr. Kay and his associates. On the 1st day of May, we requested advice from Mr. Kay's

office if his brief was ready and at that time, he [32] frankly told us that the brief was not ready but he hoped to have it the next day. Our brief was completed and ready for filing on May 1st. Mr. Thorsness of our office, because of his discussion with Mr. Kay, felt that it was unnecessary to serve and file our briefs on the due date; however, when he came back to the office, it was after 5:00 o'clock and consulted with me and I said, "file that brief the first thing in the morning"; and our brief has been on file in this court pursuant to the Court's direction ever since May 2, 1956. Mr. Kay's brief was not served upon us until the end of that week—I believe it was on Friday, rather than on Monday, when it was due; now, I may be off one day there, but not more than one day. Subsequent to that time, your Honor, we, of course, discussed with Mr. Kay's office whether or not reply briefs were to be filed and because of the shortness of time, after receiving his brief, and getting it down to Seattle and giving the Seattle counsel an opportunity to go over it, Mr. Kay and Mr. Thorsness agreed between themselves that no reply briefs would be filed on either side as they anticipated bringing up the necessary points of authorities in oral argument before the Court on the 18th. On the 17th, your Honor, we telephoned the Court to find out if these arguments would be heard on the 18th and Mr. Thorsness of our office advises that your Honor at that time advised that you felt that there was enough problems involved that you had to set aside more time for the argu-

ment and that because of the 18th being pretty well congested, you put it over until today, which is Tuesday, I believe, [33] the 22nd, at 10:00 o'clock in the morning. Last night, your Honor, within two minutes of 5:00 o'clock, we received a telephone call from one of the Deputy Clerks of Court, advising us that the Court had ruled on the matter and felt that no oral argument was necessary. We may or may not have understood exactly what the Court's ruling was, but it was our understanding from conversation by Miss Strahorn—or, Mrs. Strahorn—that the Court had overruled practically —well, all of the motions with the exception of the motion for the signing of the judgment under 54(b), which the Court did.

The Court: 54(c).

Mr. Renfrew: Now, your Honor, I want to state that extensive work has gone into our preparation for argument in this case; that we feel that we can, and could have conclusively shown the Court that the authorities cited by Mr. Kay in his brief were clearly distinguishable and since we have not now that opportunity, your Honor, in order to preserve the record, we wish to file a reply brief wherein we have set forth our position with regard to every authority cited by Mr. Kay, which I feel clearly shows that they're not in point in the case at bar. I ask permission to do this, your Honor, after frankly stating to you that we kept the office force on very late last night in order to have this prepared. We did not anticipate doing this because of the agreement between counsel that

due to the insufficiency of the time and due to the fact that even on Friday, the Court advised us [34] that the matter would be heard today, we certainly expected to have an opportunity. I want to state, your Honor, that we seriously object to the Court's ruling in this matter, without giving us an opportunity to argue the case, but, of course, we view your Honor's judgment and merely ask at this time permission to file a reply brief which we have prepared and which is the gist of our argument—would have been the gist of our argument at 10:00 o'clock this morning.

The Court: The motion is granted. The Court took the position that the briefs were in and based upon the briefs and also the decision of the Ninth Circuit Court of Appeal, I felt that arguments would not assist the Court any as the Court pretty well had made up its mind based upon the briefs and upon that decision. Now, the Court would be glad to have you file your reply briefs as I didn't know they were coming in and nothing about it and didn't know about the agreement you made with one another as to the withholding of the reply briefs and the Court will consider those briefs and if by chance they would dissuade the Court from any ruling heretofore made, I'd be glad to reconsider it.

Mr. Renfrew: Very well, your Honor. Now, I want to state to the Court at this time that this arrangement for not filing any reply briefs due to the shortness of time and the agreement between counsel was made between Mr. Thorsness and Mr.

Kay and I want the record to show that Mr. Thorsness is here [35] in court and heard me make that statement and I am stating it because that is what he told me. If it isn't so, I want him to stand up and say so, right now. I don't want any misunderstanding on that.

The Court: Mr. Thorsness, there is no misunderstanding between yourself and the Court as to the filing of these reply briefs, is there?

Mr. Thorsness: No, your Honor, that is correct. I talked to Mr. Kay and he indicated, or asked me if I intended to file a reply brief and I said I didn't believe so; I thought we'd deal with it in oral argument and he agreed and indicated he wouldn't file a reply brief, either.

The Court: Mr. Arnell.

Mr. Arnell: Your Honor, yesterday I filed an appearance on behalf of—I think five people, who signed as sureties and Mr. Kay signed the stipulation permitting the appearance and also the adoption of the points which Mr. Renfrew has raised on behalf of his clients. I want to be sure the Court has no objection to the manner in which I proceeded and Mr. Renfrew has consented, too, that we may take advantage of the points raised in their briefs.

The Court: Well, certainly, that wasn't very timely, counsel. I had no notice of it, nor at this time don't even know what your position is or what your grounds might be for appearance. [36]

Mr. Arnell: If your Honor please, I realize that I might be criticized by the Court for filing

those papers yesterday; however, I have checked the rules and there is no specific procedure, so far as I can find, with reference to procedure of this kind.

The Court: Well, excepting this: the appearance of all parties, after the case has of course been filed—and you have not been sued or made a party to it—must be upon the order of the Court.

Mr. Arnell: I think, your Honor, based upon the research that I have done, that the motion which was filed by the Plaintiffs in this action is sufficient to enable the Court to render judgment based on the mandate of the appellate court.

The Court: Well, now, let's stay with the issue, as to your right to come in without order of the Court.

Mr. Arnell: Well, these sureties, your Honor, are made parties by virtue of the motion.

The Court: What motion—that the Plaintiffs made?

Mr. Arnell: Yes, the motion for judgment against the sureties.

The Court: Well, of course, they—on the ruling of the Court, though, they haven't been affected adversely because the—just a moment, please. Let me read my notes here. (At this time, the Court read over his notes.) You are referring to the motion exonerating the sureties on the bond? [37]

Mr. Arnell: No, I am referring to the Plaintiffs' motion, your Honor, for judgment on the supersedeas bond that was noted by Mr. Kay and

Kay and I want the record to show that Mr. Thorsness is here [35] in court and heard me make that statement and I am stating it because that is what he told me. If it isn't so, I want him to stand up and say so, right now. I don't want any misunderstanding on that.

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Mr. Arnell: No, I am referring to the Plaintiffs' motion, your Honor, for judgment on the supersedeas bond that was noted by Mr. Kay and

Mr. Connolly and served on all, I think, of the sureties.

The Court: Of course, that motion was denied so you, haven't been adversely affected.

Mr. Arnell: You mean the Plaintiffs' motion for judgment has been denied?

The Court: Yes, on the bond, yes.

Mr. Renfrew: Your Honor, so that it won't take up a lot of the Court's time, as I understand it now, the Court is going to reconsider its ruling and that—well——

The Court: No, the Court will read your brief, your reply brief, at your request and then, if by chance, you have been able to dissuade the Court from its prior ruling, the Court will at that time reconsider the ruling; otherwise, the ruling will stand as it is, but I will certainly give your reply brief the benefit of the law and research on the points that you raised, and, if by chance, it's persuasive, the Court at that time would reconsider it, yes.

Mr. Renfrew: Very well, your Honor, I will have to ask the Court to — if the Court would notify us then so that we would be in a position of knowing just when the Court has—I mean, I don't want to advise your Honor, but we've got to tell Seattle now, our corresponding attorneys, what [38] the position in this matter is, and they're going to want to know when you have considered this brief and found it not "persuasive", so to speak.

The Court: Well, counsel, have you ever had a

ruling of the Court that you haven't been advised? In other words, it will follow the regular——

Mr. Renfrew: Yes, your Honor, I have; not through any fault of yours, but I will say I have —there have been rulings of this Court that I haven't been advised of.

The Court: That being the case then, that is, I am sure, contrary to the instructions of the Court then. I think it must have been inadvertence.

Mr. Renfrew: I want to make a further point, your Honor, that if after reading that brief, the Court has some questions, we would be most happy and desirous, and urge the Court to allow us to come in and argue the point.

The Court: Very well. Now, do you have another point, Mr. Arnell?

Mr. Arnell: Well, I still haven't got clear, your Honor, what the position of the Plaintiffs' motion for judgment is.

The Court: Well, to restate the Court's position, the motion for judgment on the bond was denied. Now, does that——

Mr. Arnell: Upon what conditions?

The Court: Upon no conditions; just that it was denied.

Mr. Arnell: Then, as I understand the ruling [39] of the Court, it is to the effect that the Plaintiffs do not have judgment against any of the sureties?

The Court: That is correct.

Mr. Arnell: Is the bond continued then?

The Court: On that point it's opened and I ex-

pect counsel to raise that point and come into court and state their position on that matter.

Mr. Arnell: If your Honor please——

The Court: It's my opinion that the bond should be continued at this time, but I'd be glad to hear counsel. The Court made no ruling as to the bond itself.

Mr. Arnell: Well, if your Honor please, the Court is well aware of what prejudice can result to these various sureties. At the time that the bonds were filed, we had a going corporation. Now, we have a receivership and an insolvent corporation and the status of the various parties materially changed and——

The Court: The Court will hear counsel on the question of continuing the bond—not now, because I want you to give some research on it.

Mr. Arnell: May we have it set down for a definite time, your Honor?

The Court: Could you do it this afternoon at 2:00 o'clock?

Mr. Arnell: Could it come up on regular motion day?

The Court: Well, it could, excepting this: that [40] it's been requested that motion day go over until the 8th of June because a lot of counsel are going down to this Alaska Bar Association and the Court wants to cooperate with you on that basis. As a matter of fact, I think there's about six or seven from Anchorage going down and may not have an opportunity for them to come back in time for the motion calendar which would be

on June 1st; so the Court was requested yesterday by Mr. Dunn who had polled a number of the attorneys and it seems to be the consensus of the attorneys that they prefer it go over until June 8th; and based upon that request and representation, at this time the Court would ask the Clerk to enter a minute order calling the next motion calendar for June 8th.

Mr. Arnell: If counsel can get together, your Honor, and arrive at another time, would that be agreeable with the Court?

The Court: Excepting this, counsel: it isn't very convenient to the Court to let counsel say when it's convenient for them. I've got to plan my work and I hope that you could follow in my plans somewhere along that line.

Mr. Arnell: I fully understand, your Honor. The only reason I made that inquiry is that I will have to be in Fairbanks on the 8th of June.

The Court: What I had in mind, counsel, that —you say you're prepared to argue the merits of the case this morning. Now, the Court may be wrong, I don't know, but it's the Court's [41] considered opinion that argument would be of no avail to the Court and therefore, would consume time on the part of counsel, as the Court's made up its mind as to the briefs heretofore submitted, based upon the decision of the Ninth Circuit Court of Appeals. However, I would think that you could argue the one point about the bond by 2:00 o'clock this afternoon and we could dispose of it today.

Mr. Renfrew: Your Honor, we are ready now

to argue that point. What bonds are you talking about, the supersedeas bonds?

The Court: No, the continuing of the bond for the purpose of completing the appeal.

Mr. Renfrew: You have already ruled that the supersedeas bonds are good and now — but, you haven't ruled on the question of the cost bond.

The Court: No, no, the Court has ruled that motion for judgment on the bond is denied, number one——

Mr. Renfrew: I understand that.

The Court: Number two, the motion exonerating sureties was denied.

Mr. Renfrew: The motion exonerating the sureties on the supersedeas——

The Court (continuing): ——on the bond, yes, is denied.

Mr. Renfrew: Then, what is there left to argue then?

The Court: Only this one point, whether or not [42] the bond should continue for completing the appeal.

Mr. Renfrew: What bond, your Honor, the cost——

The Court: The supersedeas bond.

Mr. Renfrew: Well, if the Court has ruled that the supersedeas bond—the sureties are not exonerated on it, I am frank to confess to your Honor that I assumed that by that ruling the Court meant if the sureties weren't exonerated the bond was in effect.

The Court: That is what the Court thought,

also, but so there would be no doubt, I thought counsel would raise that point and come into court and we would have a discussion on that basis.

Mr. Renfrew: Well, we are prepared to argue, your Honor, that the supersedeas bond should not stand and we are prepared to argue it at any time. We were prepared on the 18th. We are prepared this morning and we'd be glad to be here at 2:00 o'clock this afternoon to argue that point.

The Court: Let's set it down at that time then. That will give you all a chance to look into it a little bit.

Mr. Renfrew: May we be excused?

The Court: Yes, you may be excused.

Reconvened at 2:00

The Court: Are there any ex parte matters to come before the Court? (No answer.) I'll tell you [43] what we better do: we will dispose of Mr. Arnell's problem first since that was left undetermined this morning. Mr. Arnell, I have given some thought to that. I direct your attention to Rule 24, and if I remember correctly, you would come under Rule 24 (a3); that's intervention; and I feel if you make the proper motion to intervene in this case, that you should be allowed the motion. So, if you will formalize that, it can come in by stipulation. You can come in only with the consent of the Court under this rule.

Mr. Arnell: If your Honor please, I thought I was resisting the motion for judgment and I filed the papers that I did and it wasn't until this morn-

ing that I was aware that the Court denied that motion, so I would agree with the Court until such time as there is an attempt imposed for liability on the bondsmen and perhaps I would have no standing in court, or the bondsmen themselves.

The Court: Then we are agreed, are we, counsel; then if you desire to come in, that's what you will do then? Now, getting back to the other matter, I am wondering, counsel, if the Court hasn't more or less determined that point without any further argument and without any further discussion. Now, I am not passing upon whether the bond was then good or is now good, but by denying the motion exonerating the sureties on the bond, and denying the motion for judgment on the bond, hasn't the Court in substance, stated: "Well, you had a bond, and whatever value that was, still remains". I think it's just that simple. [44]

Mr. Thorsness: If your Honor please——

The Court: Mr. Thorsness.

Mr. Thorsness: Mr. Kay, Mr. Connolly: It's our position in that respect, that we posed the question as to whether or not this bond was or was not good. Now——

The Court: In that respect, though, Mr. Thorsness, may I interrupt you, please? Isn't that a question that is to be determined by the Ninth Circuit and not by this Court?

Mr. Thorsness: If your Honor please, in the light of the circumstances of this case, the way they have developed; that is, the appeal, the dismissal, the return of this matter to the Court and then

our motion for exoneration on those bonds, I think that question comes back to the trial court. Now, as to the new appeal, as referred to in the opinion, then the validity of any of those bonds on appeal as far as the perfecting the appeal is concerned, I imagine it would be up to the Circuit Court, but we don't have that problem here. The problem we have here is the validity of the bonds posted for the first appeal; the appeal that was dismissed. Now, judgment was made—pardon me; motion for judgment was made; motion for exoneration was made. Now, I think, quite clearly, the Court could have granted either one of those motions as far as being within the power of the Court, within the jurisdiction of the Court to decide that question. Now, the Court has denied both motions. Now——

The Court: ——and likewise denied the motion [45] for new trial, which was likewise denied by Judge Folta who tried the case, who was in a better position than this Court.

Mr. Thorsness: Yes, your Honor, I understand that, but the thing, the question, that is not clear in our mind and I think should be determined by the trial court here, is whether or not these supersedeas bonds that were posted for the first appeal, are now good or not good. If they're good, then they possibly could be continued, which we oppose if they are. If they are not good, then I submit we are entitled to exoneration of the sureties. Now, we'd like to be heard concerning the question of continuing these bonds because, your Honor, I be-

lieve in effect, by refusing both motions, the Court has in effect continued those bonds. Now, I am not—from what I have heard the Court say this morning and now, I don't believe it's the Court's intention to continue those bonds as such and make an order to that effect, and accordingly, we'd like to be heard as to the circumstances and the law as to continuing those, the first supersedeas bonds.

The Court: Well, in that respect, the Court takes the position that that isn't a matter that has to be determined by this Court, whether or not those bonds are continued. I am not passing upon the validity of the bond at that time or now and I don't feel I should. This is a matter that was remanded back for compliance with Rule 54 (b); and I corrected you this morning and I am in error; it's 54 (b) rather than 54 (c); as to whether or not the bond on appeal was good then, it's not [46] to be determined by the Court at this time.

Mr. Thorsness: Well, if your Honor please, the question of whether or not these bonds are good, I think, is very vital here, because we are in a position now of having to perfect a new appeal. The Circuit Court has said in their opinion that a new appeal will lie. We'll use the same record. Now, I think we will almost have to have a ruling as to whether or not these bonds are continuing and are good in order to stay execution.

The Court: Well, what are you appealing this time, counsel? All you are appealing is this judgment.

Mr. Thorsness: Well, if your Honor please, that is correct. We may appeal other things; I don't know right now, but possibly, the question as to whether or not these bonds are continuing and good, I think the effect of the Court's ruling is that they are good and they are continuing by the denial of our motion for exoneration of sureties.

The Court: Why shouldn't that then be determined by the Ninth Circuit Court of Appeals rather than by this Court?

Mr. Thorsness: Well, if your Honor please, the Appellate Court passes on matters that were disposed of in trial court. Now, if the Court is going to make its ruling that the bonds are good and are continuing, then the Appellate Court has something to pass on.

The Court: At this time, I am not in a frame of mind to even pass on whether they are good, or [47] were good. I think that is a matter to be determined by the Ninth Circuit Court of Appeals.

Mr. Thorsness: If your Honor please, that puts us in rather an odd position as far as the subsequent appeal is concerned. We don't know whether we posted a good bond or not.

The Court: Well——

Mr. Kay: Your Honor——

The Court: Let Mr. Thorsness finish his argument. Did you want to add anything to that, Mr. Renfrew?

Mr. Renfrew: Yes, your Honor, I would like to add two things to it.

The Court: Very well.

Mr. Renfrew: I think the vital question, your Honor, is whether or not the Appellate Court even has any jurisdiction on those supersedeas bonds at this time. If your Honor would recall, the opinion in this case says, not once, but in two or three different places, that a new appeal must be taken. Now, your Honor, that is what Mr. Thorsness is asking the Court for here, is if a new appeal must be taken, does this Court contend that the supersedeas bonds, which are presently before the Court, supersede a judgment which was not signed until yesterday? This is the question, your Honor. The Ninth Circuit Court of Appeals said in effect, there was no judgment. Now, that is the exact wording, practically, of their opinion. The judgment was fatally defective; there was no judgment. Now, it said: "We are going to send this back to the Low Court". Now, the Low Court can do [48] anything it wants to; and they specifically reiterated in the opinion that they weren't telling the Low Court what to do. You could grant a new trial; you could sign the judgment. I believe they did say you couldn't sign it nunc pro tunc. I believe they did say that, but they specifically——

The Court: No, I don't quite agree with that, but go ahead.

Mr. Renfrew: Well, I am satisfied they did say that, right in the opinion, and I think I can point it out to you if you want to hear that argument, but I am convinced that they said "a new appeal may be taken, or will have to be taken if you want to bring this back down here, if you are

not satisfied with what the Low Court does, and in that event, we have the power and do hereby provide that you may use that printed record which was heretofore submitted". Now, that's about all that opinion says. Now, your Honor, this is what we are faced with: The Court has now made a valid judgment in this case, and if we comply with the Ninth Circuit Court of Appeals' opinion, we must file a new, N-E-W, appeal. Now, we are asking this Court to exonerate the sureties on the old supersedeas bonds which were put up to supersede a judgment and the Ninth Circuit Court said there is no judgment. Now, if your Honor doesn't decide that those supersedeas bonds are invalid, it must necessarily follow that, your Honor finds that they are valid, and if you find that the supersedeas bonds which are now in this file are valid [49] bonds, then it must necessarily follow that you state, "those bonds supersede and stay execution on a judgment which I signed May 21, 1956", although those supersedeas bonds were signed two years ago to stay execution on a judgment which the Circuit Court of Appeals has held invalid. Now, that's our problem, your Honor. I can appreciate the Court's feeling that "let the Ninth Circuit Court decide all of the issues in this case", but, your Honor, we have got to have some guidance here. If the Court rules that those supersedeas bonds are good, in effect, you must do just what I have stated; you've got to hold that the bonds are not being used for the purpose in which they were made, but by some theory, unknown to me,

you are holding that they were good bonds for a judgment which was signed years later. Now, I don't hold to that type of reasoning, your Honor, but if you don't do that, and don't say they are or they aren't good, I don't know what we are supposed to do to stay execution on this judgment that you filed—or, signed yesterday. There is nothing to prevent the Plaintiff from levying execution right within the ten day period. Now, that, your Honor, is our big problem. Now, I think that I am perfectly—I don't want to belabor the point, but we have extended authorities to the effect that those supersedeas bonds are void; they're no good, and if that is true, your Honor, in perfecting our appeal, we have got to put up new supersedeas bonds if we wish to stay execution, and we'd have to put up a new cost bond if the cost bond is invalid because the bond that was up [50] there was for costs for judgment which the Circuit Court has held invalid and the Circuit Court, when they returned it here, found that the Plaintiff in the action was not entitled to any costs.

The Court: But, Mr. Renfrew, I am just going back on my recollection of a bond on appeal, but doesn't that bond provide that it shall be for the security of payment of all damages and costs which the appellant may cost the appellee in the event that it is not sustained on the appeal?

Mr. Renfrew: The bond, I think, is written in the words of the rule that requires the bond—and I think that substantially, your Honor has stated about what that bond provides, but, your Honor,

if you look at the opinion from the Ninth Circuit Court, they didn't grant anybody anything in the way of relief of costs on appeal. In fact, they said there is nothing to appeal from here; there is no judgment; the whole thing is void.

The Court: What I was trying to point out to you is this: Now, it's come back to the Court to enter judgment. That judgment has been entered and now this judgment will go up.

Mr. Renfrew: Well, does it go up automatically when the Circuit Court says a new appeal must be filed? That judgment doesn't go up if we don't file a new appeal.

The Court: That's true.

Mr. Renfrew: All right, now then, we have to do something. Now, if we file a new appeal, that judgment will go up and if we don't file a supersedeas bond, the Plaintiff in this action can [51] levy execution.

The Court: I don't know as I agree with you on that.

Mr. Renfrew: Well, I am asking the Court to either agree with me or disagree with me, and I don't care what you do. If you will hear argument I think we can convince you that those supersedeas bonds to supersede a judgment which was non-existent is just as non-existent as the judgment. Now, that's it in the nut shell—our argument, and I think we have the law to support it, but I feel, your Honor, that we are entitled to the Court's ruling on that very question because I think we are at a loss — I don't know how now that we can

stay execution and I will state to your Honor, frankly, that we would have to appeal from the Court's ruling. If you will just rule one way or the other, one of us will appeal from that ruling if necessary along with the appeal on the judgment, but we must have a determination, your Honor. Now, I am—I don't want to take any more of your time. I merely did that to show you what our contention as to our position is.

The Court: Of course, the Court was aware of your position and the Court feels that I have indirectly determined what you are asking me to determine by the rulings heretofore made upon the motions made. I think it's a moot matter right now, but I could be in error on that point.

Mr. Kay: May I be heard very briefly?

The Court: Just a moment. May we get [52] Mr. Williams in?

Mr. Kay: I wasn't going to make any argument at all on the merits of this thing because I am just going to say I agree with the position of the Court that by the rulings of the Court made yesterday, the Court—there is nothing left here today to argue on the point that the Defendant has attempted to raise. The Court ruled that we should not receive judgment on the bond. The Court also ruled the bond should not be exonerated at this time; therefore, they have asked in effect, that the Court exonerate the bonds indirectly by ruling whether or not they continue; of course, hoping that the Court would rule that they do not continue. I don't think that is a question before the

Court at this time until they file their notice of appeal of whether it's before the Court at that time or not; I don't know. When they file their notice of appeal then the question, after the ten day period, or during the ten day period, then the question could be raised as to whether or not an additional or substituted supersedeas bond is or is not necessary. Now, in my opinion, in my opinion, no different supersedeas bond is necessary. Your Honor, I want to say that the Plaintiffs are satisfied with that supersedeas bond. We don't ask to supply a different supersedeas bond on that appeal and we don't ask for a new bond or question the validity of these bonds upon the continuing of this appeal. It's all very well to pick a word or phrase out of the Court's opinion and say that there is no judgment in this case. Well, as a matter [53] of fact, there is. It's in the file; everybody can look at it. It's what they have appealed from; they have recited that there was a judgment, and there was, in fact, a judgment in the case without any question. Now, it's also very well to say that this is a new appeal. As a matter of fact, this isn't a new problem. In accordance with the Ninth Circuit, it has faced this on a number of cases. I have cited in my memorandum to the Circuit Court, which is not before this Court—I'd like just to refer to them because the Ninth Circuit has in fact passed on this, not on the precise question of involving the bonds, but just upon the fact that it's a continuing appeal when they sent it back to have a judgment corrected or to have some action

taken under Rule 54 (b). You won't find a case on which the Ninth Circuit has dismissed the appeal completely. They always leave it open for continuance. In other words, if they say if you want to come back up here now, as they did in this case, we will order the use of the previously printed record. In fact, in this case, they might just go ahead and decide the case because they have already heard oral argument on it.

The Court: Of course, that was the point I was going to make a little later on. I doubt if it will ever have to be argued again excepting the judgment which has now been entered by the Court;——

Mr. Kay: And——

The Court: ——I don't know. [54]

Mr. Kay: I don't know either. It might be that both sides will desire additional oral argument, that the Court will grant it, but the briefs have already been filed; the record is there. All that is necessary is to notify the Court that we take a new appeal and as far as this supersedeas bond question is concerned, we are not going to use it. We are satisfied that those bonds are in effect. Unless they raise it themselves, it won't be raised, because we are going back to the Ninth Circuit if they go on the strength of those supersedeas bonds. We consider them still in effect. We are satisfied with them and if they want to supply, or raise the question after they filed notice of appeal, —as of now we don't know whether they're going to appeal or not. If they're not going to appeal, then it isn't before the Court at this time because

you have denied our motion on judgment on the bond, so we are not in a position right now to ask for judgment again on them. We have—and then, so I take the position that this question that they have attempted to raise is just not before the Court and that, your Honor's ruling that they might not agree with them. I think they're perfectly proper. I think they have decided the issue before the Court and I think it's now up before it. If they wish to go ahead with the appeal, file a new notice of appeal—then let's see what the Ninth Circuit has to say.

The Court: Do you wish to reply, Mr. Renfrew?

Mr. Renfrew: It's my understanding from [55] counsel's remark that he concurs we must file a new appeal. He says he doesn't know whether we are going to file an appeal or not, so the question isn't before the Court; and if we don't file an appeal, he would attempt to move against the supersedeas bonds; and if we do file a new appeal, why, he's perfectly willing to accept the supersedeas bonds. Now, your Honor, the position is entirely different now than it was when those bonds were filed, completely different. Now, the Ninth Circuit Court said a single new appeal could be made herein. Now, of course, if we don't file the new appeal, he can levy execution on the judgment. Now, your Honor, whether we file a new appeal or whether we don't, cannot validate or invalidate supersedeas bonds that are before this Court right now. What would the mere filing of that appeal have to do with the validity of the supersedeas

bonds that are presently before the Court. They are before the Court; the whole case was sent back and those bonds are before the Court. Now, can't your Honor concede of the circumstance wherein if the Court here rules that those supersedeas bonds are good bonds, we might appeal, or we might not, because we would know that we had supersedeas bonds up to stay an execution which this Court had said were good.

The Court: Well, Mr. Kay takes the position, Mr. Renfrew, that the bonds are good.

Mr. Renfrew: Well, I am not concerned about Mr. Kay's position, your Honor. I want to know your position. I don't care what Mr. Kay thinks, whether they're good or not good. [56]

The Court: Well, I thought that would be an indication to you as to the fact that he apparently does not intend to levy upon it or to oppose your appeal if you don't put up additional bonds.

Mr. Kay: Correct.

Mr. Renfrew: Now, your Honor, if I don't put up additional bond—I mean, if I don't file a notice of appeal, I can only assume that he's going to attempt to get judgment against the supersedeas bonds and I don't believe it's incumbent upon me to wait that long to find out whether or not the Court holds those bonds to be valid.

The Court: Well, of course, counsel, I feel that I have indicated to you, at least twice—I will do it the third time—I have indicated by my prior rulings. Now, I don't know how much more specific I should be than that.

Mr. Renfrew: Well, I ask your Honor—I don't mean to belabor the point, your Honor, but does the Court feel that you have ruled that those bonds are valid and is that the Court's ruling?

The Court: The Court has ruled as heretofore indicated. I think that is clear enough.

Mr. Renfrew: Well, your Honor, then I ask for an enlightenment. I am not clear as to whether or not this Court has ruled those supersedeas bonds are valid and continuing or not valid and not continuing. [57]

The Court: I haven't even ruled on that point, but by the ruling I have made, I think you should know where the Court stands and I think that is sufficient and I think the Ninth Circuit Court of Appeals should determine any other issue from here on out.

Mr. Renfrew: Well, as I said, I don't want to irritate the Court——

The Court: Well, you won't, counsel.

Mr. Renfrew: ——but I will still state for the purpose of the record, that I don't know whether the Court has held those bonds to be valid and continuing or invalid and not continuing and I would ask the Court to state whether it is the Court's ruling that they're valid and continuing or invalid and not continuing at this time.

The Court: And I—let the record show that I told you three times what my opinion is and it's still the same, that the ruling heretofore has determined that fact. Now, if you have—I don't want to foreclose any argument of counsel. If you

feel that you have something that the Court should be apprised of by way of argument of the law, I wouldn't want to preclude you from having that opportunity, Mr. Renfrew, Mr. Thorsness and Mr. Arnell.

Mr. Renfrew: Well, I will ask the Court if you have read our reply brief that was presented this morning?

The Court: Yes, I did; I read that between [58] the time it was filed and lunch.

Mr. Renfrew: Would your Honor care for any enlightenment on the matters therein contained?

The Court: No, I would not, and furthermore, the Court is of the same frame of mind as it was yesterday when I ruled on those motions that are now a matter of record.

Mr. Arnell: If your Honor please, in regard to individual bondsmen, if they desire to appear further in these proceedings, do I understand your Honor's ruling to be that we would have to file a petition to intervene and then after that has been accomplished, to file whatever motions we might deem appropriate under the circumstances that this record is now in?

The Court: Yes, and while I am not saying this to be final, it would be my cursory considered opinion that whatever position you take will probably have to be determined on appeal.

Mr. Renfrew: Your Honor, we would like to be heard briefly on one point that is not covered in our brief concerning the matter which we thought we were coming in here for after our hearing in

the morning.

The Court: The Court would like to do this, Mr. Renfrew; I could hear a matter that was set down for 2:30 and you may get your things together at that time.

(Thereupon, the Court took up other matters in court.)

Recessed at 2:35 o'clock p.m.

Reconvened at 2:45 o'clock p.m. [59]

The Court: Mr. Kay.

Mr. Kay: May it please the Court, I just wanted to say, I don't know what Mr. Thorsness is going to argue. I had an understanding—I know Dave will agree with me on this—that it was our understanding that neither one was going to file reply briefs.

The Court: We have been over that this morning.

Mr. Kay: I see. Well, if this point should raise, that he's going to argue, should raise some point that I haven't had an opportunity to cover or feel that I should cover, I'd like permission to file a responsive brief——

The Court: Very well.

Mr. Kay: ——if necessary.

The Court: Mr. Thorsness.

Mr. Thorsness: If your Honor please, in connection with Mr. Kay's remark, our agreement that we not file a reply brief was based on the understanding that we were to have a chance to argue this orally.

The Court: That is clearly understood.

Mr. Thorsness: Now, the point that I wish to urge upon the Court at this time concerns, in effect, the continuing of these bonds. Now, it is my feeling that although the Court hasn't said so in so many words, by the Court's ruling, it has continued these bonds and it is to that action of the Court that I wish to address my remarks. [60]

Now, this question is discussed generally in Volume 50, American Jurisprudence — Suretyship, Section 320, and following—or, particularly, at Page 1116, Section 321, concerning the change, the alteration of the circumstance and in particular, the risk involved as respects the surety. Now, the citation I gave the Court reads as follows: "If, however, the change or alteration is prejudicial, the Surety is discharged whether he is or is not a compensated surety and whether or not he had the expectation of incidental and indirect benefits from the contract."

Now, principally, it is our position that the condition of the bond has been satisfied. The case went up on appeal and was dismissed. The dismissal was certainly not equivalent to an affirmative answer in any way, shape or form.

The Court: Nor, was it a reversal, either.

Mr. Thorsness: I understand that, your Honor. No, the Court found, inferentially at least, by not finding any damages, that no damages had accrued to the Plaintiff by virtue of the appeal. Therefore, it sent the matter back down to be further disposed of, providing for a new appeal. Now, it's our position that that bond entered into some two

years ago with those sureties, contemplating, as they did, the ability of the principal to pay off the judgment, if on appeal that judgment should be affirmed. I submit that those sureties at that time were required, as a matter of law, of a varied degree, to look to the ability of the principal in signing the supersedeas bonds as sureties. I submit, [61] further, that at this time, at this late date, there has been a material change, a very material change in the ability of the Defendant here to pay off that judgment, if it is affirmed on appeal——

The Court: Counsel——

Mr. Thorsness (Continuing): ——and by reason thereof——

The Court: Pardon me, please. I can't consider that as a meritorious argument because if that were the case, then any time a person appealed and they went bankrupt or were not able to respond, then the fellow says, "Well, I'm sorry; I didn't intend that the guy was going to go bankrupt in the meantime".

Mr. Thorsness: No, your Honor, that is not the case we have here, I believe. Certainly, I will concede that on an ordinary appeal and supersedeas bonds and principal, if it goes bankrupt, well, of course, in that particular instance that is what the supersedeas is for, but here, we don't have that situation. We have the situation where a bond is being continued, continued beyond the scope of its operation as contemplated by the sureties. It is not the case where it goes up on appeal and affirmed and then the principal turns out to be in-

solvent. By the Court's order the bond has been continued to cover this new appeal. It has been continued to cover the new appeal without the consent of the sureties. In effect, it has extended the coverage of this bond and intervening events have increased the risk. Now, it is a fundamental law of suretyship that an extension of the risk, an [62] increase of the risk without the consent, any conduct of the principal or of the creditor which substantially increases the risk involved in the promise of the surety will release that surety.

Now, to support that position, I would cite two cases, Southwestern Surety, an Insurance Company vs. Terry, 185 Southwestern, 54, at page 56. Now, in this case, there was a building contract and there was a change made as to the materials that went into that building. The Court found there, that that change was a material variance as to the risk contemplated by the surety and, accordingly, the surety was discharged. In other words, the surety promised to do one thing and now they can't come along and say, "Well, you also promised to do something additional", which he didn't promise to do.

The Court: May I interrupt you, please? What is the incurred additional risk at this time?

Mr. Thorsness: The incurred additional risk—it is inability to pay the judgment if affirmed.

The Court: That took place though, did it not, counsel, after the bond had been signed and isn't that one of the risks that a bondsman takes at any time?

Mr. Thorsness: No, your Honor, I don't believe so. As to that one particular bond, as to that one particular bond, not considering the question of continuance, that is correct, but here, we have the additional question of continuance and the [63] Court must look to the bond to determine the intent of the parties whether or not this bond was intended to be a continuing bond to cover the obligations as they accrue. Now, the situation that your Honor speaks of is the usual situation where there is no question of continuing the obligation of the surety. Here, by the order of the Court, the obligation of the surety has been broadened and extended to cover not only the first appeal, but the new appeal which now may be prosecuted, and it is for that reason that we contend that the risk is material; it comes into play. Certainly, had there been no question of continuance, then that risk was a risk that the surety took, but the surety now is required to continue to assume that risk until the appeal is taken, and I submit, that the facts have materially changed and a continuance thereof would in effect, run contrary to the intention of the parties to the bond and run contrary to the promise of the surety. Now, the promise of the surety in these cases in that appeal, the first appeal, was to pay the judgment, if affirmed, or if dismissed. Now, the Plaintiff may make quite a point of dismiss*ed* for any reason. I submit that although this bond may be subject to a strict construction, that that rule is a rule of construction only and for that general rule, I would cite the

case of State vs. Blanchard Construction, 136 Pacific, 905. Now, I think without a doubt, by reading the bond, it is obvious from a cursory examination of that bond that the principal and surety were to [64] pay, or rather, the surety was to pay if they did not accomplish what they intended to accomplish by the appeal; in other words, if the right of the Plaintiff was, in effect, affirmed by the Appellate Court. Certainly, that was not done here. If anything was done here, the direct opposite occurred. The Plaintiff was required to come back to the Trial Court and perfect his judgment prior to the time he was even allowed to appeal. Certainly, he acquired no rights by that, by the appeal. Certainly, he didn't even maintain what he thought he had when he started.

The Court: Let me ask you, counsel, do you think the bondsmen took the fact into consideration that the judgment had not been signed at the time that they went on the bond?

Mr. Thorsness: Well——

The Court: Isn't it a fact they never even thought about it, didn't even know about it?

Mr. Thorsness: That's very possible.

The Court: So, therefore, you can't say that that was a condition that was broken.

Mr. Thorsness: The condition that was broken as far as I see it was the continuance of that obligation. Had the Court affirmed on appeal, then the bondsmen would have been subject to pay the judgment as affirmed. Now, the fact that they didn't take that into consideration, I don't think

is material. The important question as I see it here, is that their promise limited to one appeal is now being extended to a second appeal under [65] circumstances which in all probability——

The Court: It was only technical at the most.

Mr. Thorsness: I think it's a little bit more than technical, your Honor, because as your Honor well knows, the circumstances of the principal here have changed materially. Now, by virtue of that fact, the sureties wouldn't in all probability be required to pay without much question. Now, before, when they promised before at the first appeal, I think there existed at that time a possibility that the principal could pay off and that they wouldn't have to pay. I think your Honor in effect, is making them an insurer, an insurer of the ability of the principal to pay, and continuing their promise beyond the natural scope of its import. I think one additional matter should be stated and that is that the principal here, is now in receivership and, accordingly, the Plaintiff here could not execute against that principal to recover the amount of his judgment, if affirmed. Therefore, it pleases the sureties in an extremely dangerous position; certainly, not a position that a surety would enter into voluntarily. It puts him in the position of substituting himself for the principal, in effect. It puts him in the position of assuming the obligation, assuming the obligation of a judgment of record; true, possibly going on appeal to be reversed, but only possibly. In the usual instance, the surety promises to pay, if the principal doesn't pay, but

in the usual instance, the principal is at least in some position where he might be able to pay. [66] Now, here, that is not the case. If judgment is affirmed on appeal, the sureties are automatically subject to execution or subject to judgment on their supersedeas bond. Now, I'd like to just add, and reiterate, what has been said before, quoting from the words of the opinion of the Circuit Court in this case when it was sent back down for further action, and that is that the Circuit Court said this, and I think it's material to deciding this question of whether or not, by the continuance of this bond, there is an extension of the sureties' risk beyond which he voluntarily assumed in the light of the material variation of the ability of the principal to pay, and the language, the pertinent language is this: that the case will belong absolutely to the next trial judge who picks it up. If he should desire to enter appropriate judgment, complying with Rule 54 (b), and denying a new trial, a single new appeal could be made herein and this Court has power to order the use of the previously printed record.

Now, if your Honor please, my position is that by the Court's ruling in effect, I submit that the bonds continue; the Court subjects the sureties to a risk far beyond the risk which they voluntarily assumed in executing the supersedeas bond for the first appeal.

The Court: Very well; Mr. Kay.

Mr. Kay: I will be very brief, your Honor, because I feel there is nothing before the Court. I

feel that, in effect, the—counsel have just argued, or they're asking the Court for [67] declaratory judgment here on supersedeas bonds, as to whether or not they continue or not. That question isn't before the Court and won't be until they file a notice of appeal. If they intend to do so it may not be before the Court, this Court, at this time, and if they don't raise the question, it won't be before any court and we don't intend to raise the question until we get it before the Ninth Circuit Court and it won't be before them; if they win in the Ninth Circuit Court that will dispose of it. It's only in the event they do appeal and if we lose, or, we win, that the question will then become important and will then be decided; at least it's not before the Court now. They're asking for a declaratory judgment. They seem to make—attach some importance to the fact that the Circuit Court of Appeals didn't allow costs. Well, the question of costs on this thing was not considered by the Court and not referred to by the Court, as I read their opinion. They didn't pass on that question at all, which is an indication to me, your Honor, if they had considered that their opinion finally disposed of this appeal, they'd have considered the question of costs. I think they knew, and we knew, all of us knew, that their opinion was a purely technical step because failure to comply with the provisions of Rule 54 (b), and they knew very well that their opinion in no way finally disposed of this case. If they had finally disposed of the case, they would have at least mentioned whether or not they allowed

costs or not, which they didn't even mention. Now, Mr. Thorsness—the Court in its [68] question pointed out he attempts to argue that the condition of the principal should have some effect here. If this Court considered the condition of the question at all, I think that would be a very strong argument in our behalf because we withheld to what in effect their argument is; we withheld argument; withheld execution at a time we had it in the hands of the marshal; we witheld execution, your Honor, by order of the then judge, Trial Judge of this Court presiding over that case, at their request to enable them to file this supersedeas bond when that execution was in the hands of the marshal. It had been, in fact, levied upon their bank account, and the magnificent sum of $14.00 had been obtained by levy. A continuing levy was threatened to the following day. They went to the Judge, not we went to the Judge, they went to the Judge and said "stop this execution," and the Judge ordered us to withhold our execution until the following Tuesday, pending their filing a proper bond. They did not then raise any question concerning the finality of the judgment whatsoever. They came in and filed this bond. They voluntarily entered into this contract with the Court and with us that, "if you will withhold that execution * * *"—and I don't care whether the execution was valid or not; it was effective and the Court viewed it as effective and the Court prevented us from going ahead on it in view of their willingness to execute this bond; so, if there's been any change in the condition of the

principal, it's been to our detriment and it's been—we're the ones that should be making that argument [69] because we have yielded the position that we were in, according to them, the strong position that we were in, the possibility of collecting this judgment from the principal. We have been—we have not only yielded it, but have been forced to yield by the Court and then bound by their filing this bond, and I can't see that argument in any way, except to our benefit. As a matter of fact, the intention of the sureties when they signed this bond was as they recited in the bond itself—"The condition of this bond is that if the judgment in full herein * * *"

Now, the judgment which you Honor signed yesterday is the "judgment herein." It's true that it was only signed yesterday and the bond was signed sometime ago, but at that time there was a judgment identical with the judgment that your Honor signed yesterday except for the language required by Rule 54 (b). That judgment is identical word for word with the judgment at that time and there isn't—in other words, we can't pick this thing to pieces and say there was no judgment or this is a new appeal. I don't care if those words are used or not. They aren't—as a matter of fact, everything in the Circuit Court opinion, that first page is dictum. They sent it back for failure to comply with Rule 54 (b). All of the rest of the discussion was just conversation. That's what they did, dismiss the opinion because of failure to comply with Rule 54 (b). It wasn't ours, it was theirs and I

say that the Court is not required at this time to say whether or not these bonds continued. The Court has said [70] that they will not be exonerated. The Court has said that they will not permit judgment on them at this time. I say that there is no—any attempt to ask the Court to declare whether or not they're in effect or not is an attempt to obtain the declaratory judgment from the Court and not permitted at this time.

Mr. Renfrew: Your Honor, may I make one slight observance?

The Court: Yes.

Mr. Renfrew: Counsel has stated that there was no question as to the finality of the original judgment and that the defendants in this action never raised such a question. I don't concur in that statement at all. I want to point out to the Court that a motion was filed requesting the Trial Judge to comply with Rule 54 (b) and that the Trial Judge denied that motion. In other words, the Defendants in this action requested the Trial Court to comply with the very rule which would have, if he would have complied, made a valid judgment.

The Court: Well, that was on the original trial.

Mr. Renfrew: That was after the trial.

The Court: But then it was on original proceedings not before this Court.

Mr. Renfrew: I think everything is before this Court.

The Court: Well, excepting this: that was determined by the Honorable George W. Folta and was not called to this Court's attention.

Mr. Renfrew: I understand that, your Honor, but counsel [71] made the statement that we had never questioned the finality of that.

Mr. Kay: If I made such a statement I didn't mean to make it.

Mr. Renfrew: Well, it's in the record whether he made it or not.

Mr. Kay: He did file and it was denied a long time before this proceedings that I refer to occurred.

Mr. Renfrew: May I complete my argument, counsel?

Mr. Kay: Not if you are going to misquote me.

Mr. Renfrew: I will submit to the record, your Honor, as to what counsel said.

The Court: Well, you may proceed, Mr. Renfrew.

Mr. Renfrew: Now, your Honor, when the Trial Court refused to comply with our request, that he comply with Rule 54 (c), or (b), and did place the judgment of record, we had to file supersedeas bonds to stay that execution on that judgment although we had done everything that we could do to get the Trial Court to make that judgment a valid judgment. We couldn't just sit back and not file supersedeas bonds because they had gone ahead and levied an execution and the question would have been moot, so we did file the supersedeas bonds and counsel has already argued to you our position as to what those bonds are. Now, Mr. Kay made one other statement. He said we can't pick and say that—pick this thing up piecemeal and pick it apart and say [72] no judgment—that the Ninth

Circuit Court, or that there was not judgment. Well, maybe we can't, your Honor, but that is the very language that the Circuit Court used in their opinion and I quote: "It is obvious that there is no final judgment here on the Thomas and Frazier claims. The essential finding that there is no reason for delay being absent." There is no final judgment; it's obvious, they said, and they went on to say that the verdicts were there without any judgment and I submit that the Defendants in this action did everything they could possibly do to make a correct judgment by making a motion that the Court that tried the case comply with the rule, which motion was denied and I don't think we can be penalized for that.

The Court: Very well. Well, decision will be reserved.

Mr. Arnell: Your Honor, may the record——

The Court: Just a moment, please, the Court will strike the record on that point. The Court does not intend to reserve decision, but the Court will consider argument and then determine whether or not a further decision should be made in this case.

Mr. Renfrew: I will ask the Court to please notify counsel whatever your decision is.

The Court: The Court will be glad to do that. Now, Mr. Arnell.

Mr. Arnell: May the record show, your Honor, that I—while I didn't appear formally because of the fact that your Honor had ruled on the motion for judgment which was filed by the [73] Plaintiffs;

that I did appear and that your Honor directed my attention to Rule 44, that I reserve the right on behalf of the people whom I represent to come in at a later date in an attempt to file a petition or motion, whatever is required there for leave to intervene to protect the interest of the people whom I represent.

The Court: Now, that—pardon me, please. I had in mind that that would be on appeal, only, and not before this Court because we can't piecemeal it.

Mr. Arnell: Your Honor, this matter still is piecemeal before the Court. The judgment was signed yesterday; there has been no appeal.

The Court: Excepting this, counsel, surely you don't expect this Court to permit you to come in later, the day after tomorrow, or next week and argue virtually the same thing that's been argued today that was set down for hearing at 2:00 o'clock today. We don't have the time; we can't do it, Mr. Arnell.

Mr. Arnell: I think, your Honor, that I have the obligation as an officer of the Court and also the right to file these papers; whether your Honor wants to consider them, or, hearing any other argument, that's another point.

The Court: In that respect, the Court's granted you the right to file papers and I suggested how it should be done to protect your—the interest of your litigants.

Mr. Arnell: Yes. [74]

The Court: But, I wouldn't want you to get the impression that the Court is going to permit

you to come in at some subsequent time and go into the matter again because we don't have the time to go over the same ground.

Mr. Arnell: I realize that, your Honor. However, I wish to have whatever papers I could file presented to your Honor before this ten day period expires since the judgment was signed yesterday; I realize that, until I get it in court this afternoon——

The Court: Very well. Is there anything else to come before the Court at this time?

Mr. Renfrew: May I ask the Court if the judgment that was signed was the copy of the judgment, proposed judgment, furnished us here several months ago?

The Court: Yes, upon which Mr. Hellenthal specifically noted a sentence to the effect that he wished to be heard in oral argument; if I am not mistaken, it was sometime in December of 1955.

Mr. Kay: Right after the opinion was heard.

The Court: Yes. This court will go into recess until the call of the gavel. [75]

Anchorage, Alaska, May 23, 1956
10:15 o'clock a.m.

The Court: In the case of Dorothy Neal, et al, Plaintiffs, vs. Matanuska Valley Lines, Inc., et al., Defendants, A-8214 and the allied cases of A-8666 and A-8413, the ruling was made by this Court the day before yesterday on the motions herein contained. At the request of counsel yesterday, the Court permitted counsel to argue certain points

and phases of the case although the Court had ruled previously and also, the Court did permit counsel to file a reply brief to the briefs presently in the file which had been considered by the Court in detail and for a long period of time before making the ruling.

After consideration of all of the argument, as well as the reply brief, the Court at this time announces that the decision heretofore made shall stand. A minute order may be entered accordingly and as requested by counsel, would the clerk at her convenience, please notify all counsel?

Deputy Clerk: Yes, sir. [77]

* * * * *

[Endorsed]: Filed Aug. 14, 1956.

[Endorsed]: Nos. 15252, 15253, 15254. United States Court of Appeals for the Ninth Circuit. Matanuska Valley Lines, Inc., a Corporation, Appellant, vs. Dorothy Neal and Nathaniel Neal, Jr., Blanche Thomas, Wordie Frazier and Prince Frazier, Appellees. Transcript of Record. Appeals from the District Court for the District of Alaska, Third Division.

Filed: September 4, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.